TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 236.

JOHN G. KILLIAN ET AL., TRUSTEES OF THE GERMAN LUTHERAN EVANGELICAL CONCORDIA CHURCH, APPELLANTS.

vs.

JOHN W. EBBINGHAUS, TRUSTEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED APRIL 9, 1881.

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A AUTHENTICATION OF RECORD.

Clerk's Certificate.

Clerk's Office, Supreme Court of the District of Columbia.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 19th day of March, 1881.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

Justice's Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 19 day of March, 1881.

D. K. CARTTER,
Chief Justice. [SEAL.]

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 19 day of March, 1881.

[SEAL.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

1 *Bill.*—Filed July 17th, 1877.

In the Supreme Court of the district of Columbia, the 17th day of July, 1877, in equity.

JOHN W. EBBINGHAUSE
vs.
T. J. KILLIAN, JOHN SCHENCK, and JOHN SCHNEIDER, trustees of the German Evangelical Church, and AUGUST SIEVERS, EDWARD KOLB and LUDWIG FREUND, trustees 1st Reformed Church. } No. 5688, eq. doc. 17.

To the Supreme Court of the district of Columbia, holding an Equity Court for said district:

1. The complainant complains as follows:

1. He is a citizen of the city of Washington, district of Columbia,

and is the trustee and legal owner of certain real estate in the city of Washington aforesaid, known as lot No. nine (9) in square No. eighty (80) in said city, which said property was donated or given in trust by one Jacob Funk to D. Reintzel as trustee to hold for the use and benefit of the German Calvinists Society; and that complainant now holds said property as trustee aforesaid and as the successor to D. Reintzel, deceased, for the German Calvinists Society and their legal representatives, in accordance with the intent
2 of Jacob Funk, the original donor.

That the complainant holds his said trust property for the use and benefit of the legal successors and beneficiaries of said trust, whoever they may be, and is ready to pay the rents, issues, and profits arising therefrom into this court, to be disposed of as the court shall direct, and to perform the duties of his said office to the best of his ability and according to law; and the complainant brings this his bill with the view and for the purpose of having the court settle and determine the question according to law as to who are the legal beneficiaries under his said trust.

2. The above-named defendants are all citizens of the district of Columbia, and the said T. J. Killian et al., trustees of the German Evangelical Concordia Church, claim to be the legal beneficiaries of the said trust property for religious purposes, to wit: Lot No. nine (9) in square No. eighty (80), in the city of Washington aforesaid, and entitled to the rents, issues, and profits thereof as such beneficiaries; and that the said T. J. Killian et al., trustees of the German Evangelical Concordia Church aforesaid, have already converted, from time to time, large sums of money to their own use and
3 benefit, being money arising from the rents, issues, and profits arising from said trust property, without the collusion or consent of the said D. Reintzel, or his legal representative, and without the consent of this complainant; and that the said T. J. Killian et al., trustees aforesaid, have in their possession or power diverse contracts, leases, books, papers, and documents, whereby, if produced, the truth of the matter aforesaid would appear.

3. The defendant, T. J. Killian et al., trustees of the German Evangelical Concordia Church aforesaid, ought to account to this complainant for the rents, issues, and profits arising from said trust property aforesaid, converted by them as aforesaid; and ought to be decreed to pay the same into court to abide the determination of the issues of this suit.

4. The complainant is informed and believes that the defendants, August *August* Sievers et al., trustees of the 1st Reformed Church of the city of Washington, D. C., also claim to be the legal successors of the German Calvinists Society and the legal beneficiaries under the said trust, and to be fully entitled as such to all the rents,
4 issues and profits, and estate in and to said property; and that the said August Sievers et al., trustees of the 1st Reformed Church, are expected to sue this complainant for the recovery of their supposed rights.

5th. That the complainant does not collude with and has not incurred independent liability with either of said claimants, and that he claims no interest in the matter save such as attaches by reason of his said office as trustee aforesaid.

Prayer.

1. The complainant, therefore, prays as follows:

1. That an account be taken of the rents, issues, and profits arising from the said trust property aforesaid, as converted by the said defendants, T. J. Killian et al., and their predecessors, for the use and benefit of the German Evangelical Concordia Church from time to time aforesaid.

2. That the said defendants, T. J. Killian et al., trustees of the German Evangelical Concordia Church, may be decreed to pay into court what shall be found so due on account of rents, issues, and profits arising from the said trust property converted by them aforesaid, to abide the determination of this suit and the order of the court.

5 3. That the defendant, T. J. Killian et al., trustees of the German Evangelical Concordia Church, and all persons claiming and acting under them, may be restrained by order and injunction of this court from bringing suit against this complainant on account of, and from further interference with, the trust property, to wit, lot nine (9) in square No. eighty (80) aforesaid, during the pendency of this suit.

4. That the said defendants, August Sievers et al., trustees of the 1st Reformed Church aforesaid, and all persons acting or claiming under them, may be restrained by order and injunction of this court from commencing suit against this complainant on account of, and from further interference with, the trust property, to wit, lot No. nine (9) in square No. eighty (80) aforesaid, during the pendency of this suit.

5. That the respective claimants aforesaid, who claim to be the beneficiaries of the trust property aforesaid, may be required to interplead together, and that this complainant may be indemnified.

6. That for the purposes aforesaid all necessary accounts
6 may be taken, inquiries made, and directions given.

7. That the complainant may have such further or other relief in the premises as the nature of the case may require.

To which end the complainant prays for process against the defendants, August Sievers et al., trustees of the 1st Reformed Church aforesaid, requiring them and each of them to appear and answer the exigency of the bill.

J. W. EBBINGHAUSE.
P. E. DYE,
Solicitor for Complainant.

And the said John W. Ebbinghause, the complainant, being duly sworn according to law, deposes and says: That he does not collude

with either claimant to the said trust property aforesaid, and that he brings this his suit for the purpose, and only for the purpose, of having the court determine the question as to which of the said claimants are the legal beneficiaries of the said trust.

J. W. EBBINGHAUSE.

7 I do solemnly swear that I have read the bill by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

J. W. EBBINGHAUSE.

Sworn to and subscribed before me this 17th day of July, 1877.

JOHN N. OLIVER,
U. S. Comm'r for the D. C.

8 *Subpœna to Answer.*

In the Supreme Court of the district of Columbia, the 20th day of July, 1877.

JOHN W. EBBINGHAUSE, complainant, *against* T. J. KILLIAN et al., defendants. } No. 5688.—Equity Dock. 17.

The President of the United States to (1) T. J. Killian, John Schenck, John Schneider, trustees German Evan'al Concordia Church; (2) August Sievers, Edward Kolb, Ludwig Freund, trustees, &c., defendants:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna, and answer the exigency of the bill this day filed and entitled as above, under pain of attachment, and such other process of contempt as the court shall award.

Witness

D. K. CARTTER,
Chief Justice.

[SEAL SUPREME COURT, D. C.]

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Cl'k.*

Memorandum:—That the defendant herewith served is to enter appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

9 *Marshal's Return.*

Sum'd def't Killian July 28, 1877.

F. DOUGLAS,
Marshal.

10 *Joint & several Answer of J. Schenck & J. Schneider to Bill of Complaint.*—Filed Oct. 1st, 1877.

In the Supreme Court of the district of Columbia, holding an Equity Court.

JOHN W. EBBINGHAUSE
v.
T. J. KILLIAN et al. } Equity, No. 5688.

The joint and several answer of John Schenck and John Schneider to the bill of complaint of John W. Ebbinghause filed the 17th of July, A. D. 1877.

1. These defendants deny that the said plaintiff is the trustee and legal owner of the said real estate described in the bill of complaint; on the contrary, they say that the said defendants and John Geo. Killian, their associate trustee, are the only lawful and equitable trustees of said property. And further answering, these defendants say that the said property was not donated or given for the benefit and use of the "German Calvinists' Society," but was for the "Calvinist Society." And they further deny that the plaintiff, who is an interloper, holds the said property described in the bill as trustee
11 or successor to D. Reintzel, or as successor of any one having title thereto. And they further say that it is false as stated by the plaintiff that he holds his said trust property for the use and benefit of the legal successors and beneficiaries of the said trust; the plaintiff's pretensions are false and fraudulent.

2. These defendants admit that they have books and papers in respect to the said property, and are ready and willing to produce them when required by the court, all of which will show the rights of the defendants in the premises and the groundlessness of the plaintiff's assumptions.

3. The defendants submit to the honorable court that they need not account for rents and profits except to the people for whom they are trustees, and to them they are always ready and willing to account.

4. As to the matters and things stated in the fourth paragraph of the bill, these defendants say they have no knowledge, and the same may or may not be true so far as they know.

5. These defendants say that they have no personal knowledge of the truth or falsity of the plaintiff's statement in the fifth
12 paragraph of the bill; but they say that the mere fact of the plaintiff disclaiming collusion when none was charged is a pregnant circumstance to be considered by the court in the absence of testimony.

And the defendants further say that as trustees of the said German Evangelical Church the right and title to said property is in them, and that possession of the same has been in their said beneficiary for over thirty years.

JOHN SCHNEIDER.
JOHN SCHENCK.

JOHN E. MORRIS,
CHAS. WALTER,
Sol. for Def't.

DISTRICT OF COLUMBIA, *County of Washington*, } ss.

John Schneider and John Schenck personally appeared before me and ___ oath and say that the facts stated in the foregoing answer as of their own knowledge are true, and that the facts stated on the information of others they believe to be true.

JOHN SCHNEIDER.
JOHN SCHENCK.

Subscribed & sworn to before me on the 29th day of September, A. D. 1877.

[SEAL.] ROBT. V. HUGHES, *J. P.*

13 *Judgment prayed by John G. Killian.*—Filed Oct 1st, 1877.

In the Supreme Court of the district of Columbia, holding an Equity Court.

JOHN W. EBBINGHAUSE
v.
T. J. KILLIAN, JOHN SCHENCK, & JOHN S. SCHNEIDER, trustees, &c. } Equity. No. 5688.

The defendant Killian now comes into court and says that he has been sued by the name of T. J. Killian, and that his name is not T. J., and he never passed by that name, but that in truth and in facts his name is John G. Killian, and by this name he has always been known; wherefore this defendant humbly prays judgment of this court whether he shall be compelled to make any further or other answer to the said bill of complaint, and prays to be dismissed with his reasonable costs and charges in this behalf sustained.

JOHN G. KILLIAN.

Subscribed and sworn to before me on this 29th day of September, A. D. 1877.

ROBT V. HUGHES, *J. P.* [SEAL.]

14 *Answer of August Seiver, Edward Kolb, & Ludwig Freund.*—Filed Oct. 8th, 1877.

In the Supreme Court of the district of Columbia, the 18th day Oct., 1877.

JOHN W. EBBINGHAUSE
vs.
T. J. KILLIAN et al. } Equity. No. 5688.

The joint and several answer of August Seiver, Edward Kolb, and Ludwig Freund, trustees of the 1st Reformed Church, to the bill of complaint of John W. Ebbinghause, filed 17th July, 1877:

1. In answer to paragraphs No. 1, 2, and 3 of the said bill of complaint, or to so much thereof as we are advised is necessary for us to answer, we say as follows: We admit all the matters and things therein set forth, and have no reason to doubt that all the facts are as in that behalf alleged in the said paragraphs of the said bill of complaint.

2. In answer to the 4th paragraph of complainant's bill, we admit the matters and things as in that behalf alleged, and affirm that we are the only beneficiaries under the said trust set forth in said bill of complaint.

15 3. In answer to the 5th paragraph of complainant's bill, we say that we have no reason to doubt the matters and things are true as in that behalf alleged in the said paragraph.

AUGUST SEIVER.
EDWARD KOLB.
LUDWIG FREUND.

P. E. DYE, *Solicitor.*

16 *Amendment of Bill.*—Filed Mar. 1st, 1878.

In the Supreme Court of the district of Columbia, the day of March, 1878.

JOHN W. EBBINGHAUSE, trustee,
vs.
JOHN GEORGE KILLIAN et al. } Equity. 5688.

The plaintiff amends his bill heretofore filed in the above cause, and corrects a misnomer of one of the parties defendant in said cause, so that the name of "T. J. Killian" shall read, in all places where it occurs in the said petition, John George Killian.

JOHN N. OLIVER,
Solicitor for the Plaintiff.

17 *Replication.*—Filed Mar. 1st, 1878.

In the Supreme Court of the district of Columbia, the day of March, 1878.

JOHN W. EBBINGHAUSE, trustee,
vs.
JOHN GEORGE KILLIAN et al. } Eq. 5688.

The plaintiff hereby joins issue with the defendants.

JOHN N. OLIVER,
Solicitor for Plaintiff's.

18 *Motion to produce books, contracts, leases, papers, &c.*—Filed May 4th, 1878.

In the Supreme Court of the district of Columbia, holding a court of equity in and for said district.

JOHN W. EBBINGHAUSE
vs.
JOHN GEORGE KILLIAN et al.

And now comes the defendants, August Seivers et al., trustees of the 1st Reformed Church of the city of Washington, D. C., and by their attorneys, P. E. Dye and H. E. Paine, moves the court for a rule on the said John George Killian et al., trustees of the German Evangelical Concordia Church, requiring him or them to produce in court for the inspection of the trustees of the 1st Reformed Church, their attorneys and agents, all and singular certain books, leases, contracts, papers, and documents, being the records and among the records and proceedings of the said German Evangelical Concordia Church from about 1826 to May 3, 1878, pertaining to the title to lot No. nine, in square No. eighty, (80,) in the city of Washington, D. C.; and also all and singular certain books, leases, docu-
19 ments, and papers pertaining to the rents, issues, and profits of the said lot from 1840 to the present time; all of which books, leases, contracts, documents, and papers are now in the possession and power of the said John George Killian et al., trustees of the German Evangelical Concordia Church, and which the said trustees declare in their answer they are ready and willing to produce at any time on the order of this honorable court.

And the said August Seiver et al., trustees of the 1st Reformed Church, further say that they have every reason to believe, and do believe, that the said books, contracts, leases, papers, and documents when produced will disclose facts material to the issues to be tried in this cause, and will show, or tend to show, the interest and title of the said undersigned defendants in and to the said lot No. nine, (9,) in square No. eighty, (80,) aforesaid, and the amount of the rents, issues, and profits arising from the said lot, and with which the said John George Killian et al., trustees, &c., are liable to account to the said August Seivers et al., trustees of the 1st Reformed Church.

AUGUST SEIVERS ET AL.

P. E. DYE,
H. E. PAINE,
Solicitors.

20 DISTRICT OF COLUMBIA, *ss.*

Personally appeared before me, the undersigned, a notary public in and for the district of Columbia, Ludwig Freund, who, being by me duly sworn according to law, deposes and says that the matters

and things set forth in the foregoing statement are true to the best of his knowledge & belief.

LUDWIG FREUND.

Subscribed and sworn to before me this 4th day of May, A. D. 1878.

[SEAL.] GEO. F. GRAHAM,
Notary Public.

21 *Answer of Defendants to Motion.*—Filed May 18th, 1878.

In the Supreme Court of the district of Columbia, holding an Equity Court.

JOHN W. EBBINGHAUSE
vs.
KILLIAN and others, trustees, &c. } Equity. No. 5688.

The respondents, trustees of the German Evangelical Concordia Church, submit to the honorable court that the plaintiff has not set forth what particular document he desires to inspect, and such designation should be made to entitle him to an inspection, and that the general call for "all and singular certain books, leases, papers, and documents," &c., &c., does not entitle the plaintiff to examine and overhaul all the documents, papers, and muniments of title of the defendants relating to the said property mentioned.

And they further submit to the honorable court that the said German Evangelical Concordia Church have an exclusive title to the said real estate mentioned matured, by there adverse possession, against the said Seivers & others, trustees, &c., of over twenty years, and that by the rules of evidence they are bound to make out
22 their title upon their own showing, and that defendants are not bound to disclose their title for the assistance of the plaintiff to establish his case.

And the respondents further submit that if the plaintiff is entitled to an inspection of any paper or document in possession of them pertaining to the title to or interest in said property, the same should be specific, and its materially shown by affidavit before an order can be granted for inspection thereof.

JOHN E. NORRIS,
CHARLES WALTER,
Solicitors for the Trustees of the German Evangelical Concordia Church.

23 *Order Denying Motion to Produce Papers, &c.*—Filed May 13th, 1878.

In the Supreme Court of the district of Columbia, holding an Equity Court.

JOHN W. EBBINGHAUSE
vs.
JOHN G. KILLIAN et al. } Equity. No. 5688.

The application on motion of August Seivers and others, trustees of the 1st Reformed Church of the city of Washington, D. C., to require the defendants, Killian et al.; trustees of the German Evangelical Concordia Church, to produce certain deeds, leases, books, papers, & documents alleged to be in their possession pertaining to the title to lot 9 in square No. 80, in said city, having been set for hearing, and being argued by counsel, and the court having considered the same, it is ordered on this 18th day of May, 1878, that the said motion be, and the same is hereby, denied.

By the court: MACARTHUR,
Justice.

24 *Motion to Dismiss Cause.*—Filed Nov. 29th, 1878.

In the Supreme Court of the district of Columbia, holding and Equity Court.

EBBINGHAUS, trustees,
vs.
SCHNEIDER et al., trustees of the German Church, Calvinist. } Equity. No. 5688.

To P. E. DYE, esqr., sol. for pl't'ff.

You will please take notice that on Tuesday, the third day of December, 1878, at eleven o'clock a. m., or as soon thereafter as counsel can be heard, we shall make a motion to the court to dismiss the bill of complaint for want of prosecution.

JOHN E. NORRIS,
CHARLES WALTER,
Sols. for Def'ts.

Made service hereof by leaving copy at the office of P. E. Dye, esqr., sol'r for the plaintiff.

J. G. BIGELOW.

Nov. 29th, 1878.

25 *Order Continuing Motion to Dismiss Bill, &c.*—Filed Dec. 5, 1878.

In the Supreme Court of the district of Columbia.

EBBINGHAUSE
vs.
KILLIAN et al. } Equity, 5688.

It is this 5th day of December, A. D. 1878, ordered that the plain-

tiff have fifteen days from this day within which to take his testimony in support of his bill. And the motion to dismiss the bill for the want of prosecution is hereby overruled, without prejudice to renewing the same should complainant fail to take his testimony within the period.

By the court:

MACARTHUR,
Justice.

26 *Order Extending Time for Pl'ff to Take Depositions.*—Filed Dec. 19th, 1878.

In the Supreme Court of the district of Columbia, the 19th day of December, 1878.

JOHN W. EBBINGHAUSE
vs.
JNO. G. KILLIAN et al. } Equity, 5688.—Doc. 17.

On motion of plaintiff by J. N. Oliver, of counsel, it is ordered that plaintiff have twenty (20) days additional in which to take depositions in support of his bill.

By the court:

MACARTHUR,
Justice.

27 *Notice of Motion to Extend Time for Taking Depositions for Plaintiff.*—Filed Sept. 13th, 1879.

In the Supreme Court of the district of Columbia.

EBBINGHAUSE
vs.
KILLIAN et al. } Equity, 5688.—Doc. 17.

Take notice that on Saturday, September 13, 1879, at the opening of the court, or as soon thereafter as counsel can be heard, I will move the court to extend the time for taking depositions in the above cause for plaintiff.

JOHN N. OLIVER,
Sol'r for Pl'ff.

JOHN E. NORRIS, esq'r,
Sol'r for def'ts Killian et al.

Service acknowledged this 10th September, 1879.

JOHN E. NORRIS,
Sol. for Def'ts.

28 *Order Allowing Add'l Time for Taking Dep'ns behalf Pl'ff.*—Filed Sept. 13th, 1879.

In the Supreme Court of the district of Columbia.

EBBINGHAUSE *vs.* KILLIAN. } Equity, 5688.

On motion of counsel for plaintiff, it is this 13th day of September, 1879, ordered that the plaintiff have twenty days from this date within which to take depositions.

By the court:

MACARTHUR,
Justice.

29 *Motion.*—Filed Sept. 24th, 1879.

In the Supreme Court of the district of Columbia.

JOHN W. EBBINGHAUS *vs.* T. J. KILLIAN et al. } In equity. No. 5688.

And now comes the said complainant, by his solicitors, and moves the court to make up and transmit to the law side of this court such feigned issues as it may be proper to try, in order to determine the issue as to title made by the pleadings in this case.

CUPPY & INGERSOLL,
Sol'rs for Complainant.

30 *Motion for a feigned issue overruled.*—Filed Oct. 4, 1879.

In the Supreme Court of the district of Columbia.

EBBINGHAUSE *vs.* KILLIAN et al. } In equity. No. 5688.

This cause coming on to be heard this 4th day of October, 1879, upon the motion of complainant for a feigned issue, the court, upon consideration, overrules said motion.

By the court:

MACARTHUR,
Justice.

31 *Order overruling motion to refer to and extending time to take testimony.*—Filed Oct. 11th, 1879.

In the Supreme Court of the district of Columbia, holding an equity court, Oct. 11, 1879.

JOHN W. EBBINGHAUS *vs.* JOHN G. KILLIAN et al. }

On the hearing of the motion in this cause to refer the same to the

auditor to take testimony and an account, which was heard by counsel, upon consideration whereof, the court doth adjudge, or order and decree, that the said motion be, and the same is hereby, denied; and it is further ordered that the plaintiff have till the first day of November, 1879, to complete his testimony.

By the court:

MACARTHUR,
Justice.

32 *Order extending time for compl't to take testimony.*—Filed Jan. 24th, 1880.

In the Supreme Court of the district of Columbia.

JOHN EBBINGHAUSE
vs.
J. J. KILLIAN et al. } Equity. No. 5688.

On motion of the complainant, John W. Ebbinghause, it is ordered by the court that the time for taking testimony for complainant be extended to Jan'y 28th, 1880.

Jan'y 24, 1880.

CH. C. JAMES,
Justice.

We assent to the above order this Jan'y 24, 1880.

We consent to the above order.

P. E. DYE,
Solicitor for August Sievers et al., trustees of 1st Reformed Church.

JOHN E. NORRIS,
For Killian et al., trustees.

33 In the Supreme Court of the district of Columbia.

EBBINGHAUSE
vs.
KILLIAN et al. } No. 5688, eq. doc. 17.

At an examination held before me, an examiner in chancery, commencing on the 14th day of December, A. D. 1878, and ending June 27th, 1879, personally appeared the within named witnesses, John G. Stock, John Voegler and George Willner, on the call of the complainant, and, after being duly sworn, the within depositions were written down by me from the statements made by the said witnesses respectively, read to them, and by them signed in my presence, excepting that of John Voegler, which was an omission.

Mr. John N. Oliver appeared for complainants, Col. P. E. Dye for def't's Sievers, Kolb, and Freund, and John E. Norris, esq., for other def'ts.

JOHN A. CLARKE,
Examiner.

34 In the Supreme Court of the district of Columbia.

EBBINGHAUSE
vs. } No. 5688, eq. doc. 17.
KILLIAN et al.

Dec'r 14th. Met pursuant to notice—present, Jno. N. Oliver, esq., of counsel for complainant.

Owing to absence of counsel for defendants, adjourned to Dec'r 17th, 1878, at 10 o'clo'ck a. m.

Dec'r 17th, '78. Met pursuant the adjournment—present, counsel upon both sides.

Whereupon JOHN G. STOCK, a witness of lawful age, produced upon behalf of complaint, being sworn, says:

Exam'd:

I am eighty years old, and reside at No. 412 6½ st. S. W., in this city; I have resided in the city of Washington since 1832; [I am a member of the Evangelical Concordia Church, corner of G and 20th sts. N. W.]

The testimony within brackets objected to because the title of the society is not so alleged in the bill of complaint.

Question. How long have you been a member?

35 Answer. Ever since the church has been built, which was in 1883.

Q. Of what sect or pursuasion were the members of that church when it was first organized?

(Objected to for the reason that there must be some record evidence, and if so, verbal testimony is incompetent.)

A. When it was first organized in 1833, many Germans settled here in the city, and there was no German church here; the people had to hold service on the commons and in the woods, but at last the city council allowed them the use of their chamber for service in the City Hall, and we had a German preacher from Pennsylvania, named Unger. In one of those assemblages on Sunday, Mr. Eckloff, Mr. Noerr and Mr. Leminoski, and some other old German citizens of Washington.

After the ceremony was over on this occasion, Mr. Leminoski occupied the chair and proclaimed to those present that there were two (2) lots in "New Hamburg," in the city of Washington, given by a man named Jacob Funk to German congregations, one to a

36 Lutheran and one to a Calvinistic congregation.

(The answer, as far as given, objected to for the reason that if such grants or donations were made they were matters of record, and if not of record they ought to be, and verbal testimony is insufficient to base any title upon.)

Witness resuming, says: I did not see any paper of this; it was stated in the City Hall. If the lots were given by will, conveyance or assignment, I never saw them. Our church was then built and

called the Lutheran Concordia, and I have been a member of it since that time. [The other lot which I was told about was two squares further off, and our church took it up, but when and how they did so I know nothing about it.]

(Testimony within the brackets objected to as hearsay and for the further reason that the lot is not designated.)

Witness resuming, says: In 1866 the trustees of the church leased it to a man named George Hoffman, who married my niece. I prepared the lease and the trustees of the church signed it.
37 The lease was for the term of five (5) years. In 1871 I drew another lease and the trustees signed it in favor of the same man; that is all I know about that lot. I refer to lot 9 in sq. 80 as being leased to George Hoffman.

Q. To what lot do you refer upon which your church was built, the church to which you belong?

A. I do not recollect the number and square.

Q. Where is the church to which you belong located?

A. Corner of 20th and G streets N. W.

Q. What relation do the lots mentioned by you as having been referred to by Eckloff in the congregation on that Sunday, in the City Hall, as having been given by Jacob Funk, one for the Lutheran and the other for the Calvinist Society, have to the lots—one on 20th and G streets N. W. and the other on 22nd and G streets N. W., to which you have referred, if you know?

(Objected to for indefiniteness in the first place, and secondly, that the question calls for verbal testimony in relation to title to real estate to which already an objection has been entered in a pre-
38 vious portion of the testimony.)

A. I have stated all I know.

Q. Do you know whether the lot on 20th and G is the lot said to have been given by Jacob Funk for the Lutheran society?

(Objected to as leading and for the reason that no lot or square is designated.)

A. I do not. I know that one was given to the Lutheran and one to the Calvinist society.

Adjourned to December 18, 1878, at 10 a. m.

December 18, 1878. Met pursuant to adjournment—present, counsel upon both sides.

Whereupon the examination of the witness Stock was resumed.

Q. When did you first learn that the church to which you belong (20th and G streets,) claimed to be the exclusive owners of lot 9, sq. 80, 22nd and G?

(Objected to as tending to introduce hearsay testimony.)

A. I can't mention that time; I know nothing about it.

Q. Did you ever hear of the church 20th and G streets claiming to own it prior to the suits the trustees of said church brought against George Hoffman for possession?

39 (Objection for the reasons above stated.)

A. I know this much. I drew the leases, as I have stated in my testimony before.

Q. Were the lots mentioned by Mr. Eckloff, as you have stated, the lots upon which the church is built 20th and G, and the lot in the Hoffman suit, or not?

(Objected to, 1st, as leading in its nature, and 2ndly, that it is based upon hearsay evidence.)

A. Those are the lots.

Q. What denominations or sects composed the society and church on 20th and G sts. when it was first organized in 1833, as you have stated?

A. We called it the Lutheran, but there were some Reformers among them; the Lutherans were not strong enough to build a church.

Q. Was there any other German church in the city here at that time?

(Objected to as irrelevant.)

A. No, sir; it was the first German church built here.

Cross-examined by JOHN E. NORRIS, esq.:

Q. You say you drew two leases for the lessee, George
40 Hoffman, on lot 9 in square 80, and that they were executed by the trustees of the church; please state who the trustees of the church were.

A. The first lease was signed by the trustees, named Joachim, Jeremiah Endemauer, and John Schneider. The second lease was signed by the same trustees, excepting Mr. Endemauer, who was dead, and Henry Kaiser, who signed in his place.

J. G. STOCK.

Sworn and subscribed to before me this 18th day of December, A. D. 1878.

JOHN A. CLARKE,
Examiner.

Adjourned to Dec'r 19th at 10:30 a. m.

Dec'r 19th, '78. Met pursuant to adjournment. Present: Counsel upon both sides.

Whereupon counsel for complainant offers in evidence a certified copy of the decree of the Supreme Court of the district of
41 Columbia, passed 16th July, 1877, in equity case 5684, doc. 17, which is filed and marked J. W. E., No. 1.

(The introduction of said exhibit objected to for the reason that said decree was procured without notice to the persons in interest; 2ndly, for the reason that there was no vacancy in the trusteeship, as J. George Killian, John Schenck, and John George Schneider were trustees at that time and are yet.)

Whereupon GEORGE WILLNER, a witness of lawful age, produced upon behalf of complainant, being sworn, deposes and says:

Exam'd by Mr. OLIVER:

Q. State your age, residence and occupation.

A. I am sixty-two years old; residence, Washington city; occupation, a merchant.

Q. How long have you been a resident of Washington city?

A. Since the beginning of 1840.

Q. Were you ever connected as a member with the German Evangelical Concordia Church, corner of 20th and G sts., in this city; if so, when did your connection with it commence and when did it end?

42 (Objected to for the reason that there is nothing in the pleadings to show that the said church was called the German Evangelical.)

A. I was. My connection with it commenced in 1840 and ended in 1851, about.

Q. Were you an officer of said church, and if so, what office did you fill during that time, or any part of it?

(Objected to for the reason above stated.)

A. I was in the vestry from nearly the beginning of my entrance as a member in said church until 1852.

Q. During any part of that time were you the treasurer of the church, and if so, during what time?

(Objected to for the reason above stated.)

A. I was the treasurer of the church; that might have been charged; I may have been in and I may have been out. I would state that I was most of the time treasurer.

(Answer objected to for same reason.)

Q. Do you know lot 9, in sq. 80, corner of 22d and G sts.?

(Objected to as leading.)

43 A. I do not know it by that description.

Q. Well, do you know it by locality?

(Objected to for indefiniteness.)

A. I do.

Q. While you were a member of the vestry and treasurer of the church, did you or did you not ever hear the question of the ownership of that lot discussed by the vestry or the members of the church?

(Objected to, unless it appears that the parties defendant were present at the discussion, and for the further reason that the discussion could not settle the title to this property outside of a deed, gift, or grant by record, and that all that could be said was only verbal testimony.)

A. We had had the question under consideration several times, and we always concluded that we had the right of ownership to that ground.

(Objected to.)

Q. During the time you were a member of that church, did the church or the officers thereof, or any of them, take possession of, improve, or otherwise exercise ownership over it? I mean the lot corner of 22d and G sts.

(Objected to.)

44 A. No, sir.

Q. Of what church are you now a member?

A. The German Evangelical Lutheran Church, at the corner of 4th and E sts. n. w.

Q. During the time you were a member of the church corner of 20th and G sts., was the lot corner of 22d and G used as the property of the church exclusively?

(Objected to for the reason that it appears in the pleading that there were several churches.)

A. It was not—at all.

Q. What was the condition of that lot during that time?

(Objected to.)

A. I am under the impression it was an open lot; a common s.

Q. When did you first learn that the church corner of 20th and G sts. claimed exclusive ownership of said lot?

(Objected to as hearsay.)

A. From the commencement of my connection with that church.

Q. What sect, denomination, or creeds composed the church corner of 20th and G sts.?

A. All sorts. I may add that any denomination could join that church.

45 Cross-examination by Mr. NORRIS:

Q. Can you state who were the trustees of that church property during the time you were connected with it and acting as treasurer? if so, give their names.

(Objected to as not being responsive to the examination-in-chief.)

A. I can state without recollecting the years in which the different changes took ploce, that there were Mr. Eckloff, whose first name I do not recollect; Fred. Hager, and I think John G. Stock.

Q. When were they trustees?

A. I cannot state the different years.

Q. Was that called the German Evangelical Concordia Church at that time?

A. It was.

Re-direct examination.

Q. Were Mr. Eckloff, Hager, and Stock trustees of the church property, or of the church?

A. We had the church as our property.

(Question and answer objected to, as it involves a matter of law.)

Q. Did those gentlemen you have just named to your knowledge exercise any control or ownership over the property corner of 22d & G sts.?

46 (Objected to for the reason that the witness does not state at what time they acted as trustees, and therefore could not tell what ownership they exercised, and for a further reason that it is evidence to be given in chief, and not responsive to anything brought out on cross-examination.)

A. No.

Q. How did those gentlemen you have named become trustees?

(Objected to for the reason that if they were trustees they were either appointed by the congregation or by decree of court, either of which would be a matter of record, and that the record is the best evidence unless it is in proof that it has been destroyed or lost—verbal testimony cannot be given.

Counsel for the complainant here asks the counsel for the defendant if he will produce the records of the church for inspection and verification.

Counsel for the defendants says that he has not those records in his possession or under his control, and therefore he cannot produce them.)

47 A. By the election of the congregation.

(Objected to, as it is a matter of record and must be produced.)

GEO. WILLNER.

Sworn to and subscribed before me this 19th day of December, A. D. 1878.

JNO. A. CLARKE,
Examiner.

Adjournment subject to notice of counsel.

FEBRUARY 3*rd*, 1879.

Met pursuant to notice. Present: Counsel on both sides; whereupon—

JOSEPH SCHWARTZ, a witness of lawful age, produced on behalf of complainants, being duly sworn, deposes and says:

Examined by JOHN N. OLIVER, esq.:

Question. Where do you reside?

Answer. I reside now in Baltimore.

Q. Did you ever reside in the city of Washington; and if so, from what time to what time?

A. From 1837 up to 1878. I lived in what is known as the first ward.

48 Q. State whether during the time you resided here you were connected, as a member, with any church or churches; and if so, state what church or churches you were so connected.

A. In 1837 I went to the Concordia Church, corner of 20th and

G streets. I was not a member of it at first, but afterwards joined it in 1840. I remained a member then from that time until 1874.

Q. State whether, during the time you were a member of said church, you held any office in said church; and if so, what office or offices.

A. I was a member of the council, and also held the office of president of that council for several terms, and I think in 1852 I was elected a trustee.

Q. Were you, from 1837 to 1874, in the habit of regularly attending that church?

A. Yes, sir.

Q. What was the term for which members of the council were elected?

(Objected to for the reason that term must be specified by some writing or instrument in writing, which would be the best evidence.)

A. One-half was elected for one year, and the other half held over until the next year.

49 Q. Do you know the lot corner of 22d and G sts.?

A. Yes, sir.

Q. Did or did not the Concordia Church of which you have spoken take charge thereof?

(Objected to as leading.)

A. The Concordia Church took charge of it, and I was authorized as a trustee to lease it.

Q. Why did the church take charge of it?

A. Well, they took charge of it in this way. The German church on the corner there, of which I have spoken—they had no right to take charge of it, as the books will show.

(Objected to, for the reason that reference has been made by the witness to matters in writing, which are the best evidence, and further that the opinion of the witness has been injected into his testimony, which interferes with the title to the property or right of possession.

Counsel for defendants Sievers, Kolb, and Freund here states that the pleadings show that the books and records of the church are in the possession of defendants Killian, Schenck, and Schneider, and asks the counsel for said Killian and others if he will produce

50 them.

Counsel for the defendants Killian Schenck, and Schneider says that the court already, on motion of the complainants, has decided said defendants are not bound to produce their title, and he further says that the pleadings show and admit that said defendants last named have been in possession of said property and have had the use and benefits of the same exclusively for a period of over 21 years, and that if the plaintiff in this cause, or the defendants Seivers, Kolb, and Freund, have any title it must be of record.)

Witness, resuming, says: I mean the records of the church will show.

Q. What sect or denomination compose that church on the corner of 20th and G?

A. A part Lutheran and part Reformed joined together and built that church.

Q. About when was it that the council authorized you to lease it?

A. I could not positively say, but I think the council authorized me in 1852 to lease it, and I leased it to Mr. Myers.

51 Q. What was the condition of the lot when you leased it to Mr. Myers?

(Objected to, for the reason that if a lease was made by authority it must be in writing and should be produced, and verbal testimony is objected to.)

A. There was nothing there at all; it was like a commons.

Q. How long had it been in that condition before the lease had been made?

A. As long as I had been in Washington. Mr. Myers' son in the Corcoran Building, I think he may have a copy of the lease.

Q. At the time the Concordia Church took charge of this lot, did they do so as claiming to own it, or not?

(Objected to.)

A. No, sir.

Q. When did you first learn, if you ever did learn, that the Concordia Church of which you have spoken claimed to own that lot, corner 22d and G streets, adverse to everybody else?

(Objected to as a matter of course.)

A. Well, in the first place they did not lay any claim to it, but, as I have told you before, they authorized me to lease it. I can't give the date, but after I had leased it, Mr. Easby, H. N., told me

52 that the church did not own it and had no right to lease it.

Q. What became of the money paid under that lease, if you know?

A. As far as I am concerned, I paid the money over to the treasurer of the council of the church.

Cross-examined by Mr. NORRIS:

Q. Who were the council that directed you to lease this property?

A. That question I cannot possibly answer. Some are dead and some are living.

Q. Was that congregation, or church, if you please, called the Concordia Church, or the German Evangelic Concordia Church?

A. It was called the latter.

Q. What had Mr. Easby to do with this lot?

A. Nothing at all.

JOS. SCHWARTZ.

Sworn to and subscribed before me this 3rd day of February, A. D. 1879.

JNO. A. CLARKE,
Examiner.

53 Adjourned subject to notice of counsel.

JUNE 24, '79, 3.30 p. m.

Met pursuant to notice of counsel. Present: Col. Dye, of counsel for complainant, and John E. Norris, esq., sol'r for defendants.

Whereupon JOHN VOEGLER, a witness of lawful age, produced on behalf of complainant, being sworn, says:

Examined by Col. DYE:

I am a member of the church on 20th and G streets, known as the "Concordia," and am an officer in that church; I am the treasurer.

Q. Have you in your possession or power the original book of records of the proceedings of the church of which you are a member, from its original organization?

A. No, sir.

Q. Did you have in your possession yesterday the book I call for here—referring to the one mentioned in the subpoena?

A. I had not.

Q. Do you know where that record is?

A. I don't want to answer that.

Q. Question repeated.

54 A. Nobody can make me answer that.

Whereupon the counsel for complainant requests the examiner to certify the question to the court for its decision as to whether the witness should be compelled to answer the last question.

Thereupon the examiner hereby certifies the same to the court as directed.

June 24, 1879. JOHN A. CLARKE, *Examiner.*

Adjourned subject to further notice.

JUNE 27TH, '79.

Met pursuant to notice. Present: Counsel on both sides.

Whereupon the witness, JOHN VOEGLER, heretofore examined in this cause, was recalled and examined by Mr. Oliver.

Q. Had you when the subpoena *duces tecum* was served on you on Monday last, the 23rd inst., the book or documents mentioned therein in your possession or under your care, custody, or control?

A. Before answering I want my witness fee.

55 Here counsel for complainant hands the examiner the fee, $1.25, and witness resuming, says:

A. No, sir; I had not.

2 Q. Have you, as treasurer of the Concordia, corner of 20th and G streets n. w., the custody of the archives of said church, or any of them?

A. Yes, sir; I got some belonging to the treasurer.

3 Q. Please state whether among said archives so in your custody you have a book or books containing a history or minutes of the

proceedings of the consistory of said church from its organization, 1832, to the present time.

(Counsel for the defendants, F. J. Killian et al., trustees of the Evangelica and Concordia Church, here objects to the introduction of any testimony other than record proof touching the title or any interest in the last-mentioned church.)

A. No, sir.

4 Q. Do you know whether a book such as is described in the last question exists?

(Same objection.)

A. Yes, sir.

5 Q. Was such book ever in your possession or under your care, custody, or control?

56 A. No, sir.

6 Q. Did you have a key by which access to all the books, papers, and records of the church could be had?

(Objected to as leading.)

A. I have a key by which I have access to all books pertaining to the treasurer.

7 Q. Have you such key now?

A. Yes, sir.

8 Q. Could you have produced the book called for in the *sps duces tecum* that was served on you on Monday last?

A. I could not.

9 Q. Who has the immediate custody and control of that book now?

(Objected to as leading.)

A. I don't know.

10 Q. Who had it on Monday last?

(Same objection.)

A. I don't answer that question.

11 Q. Who had it on Tuesday last?

(Objected to as immaterial, and further because the plaintiff has no right to inquire as to who had it in possession or to inspect it, unless voluntarily produced.)

A. I don't know.

12 Q. Who had it last Saturday?

57 (Same objection.)

A. As same as on Monday; I cannot answer those questions.

13 Q. Did you have it Saturday?

A. No, sir.

14 Q. Did you see it on Saturday?

A. No. sir.

15 Q. When did you last see it?

(Same objection.)

A. It makes no difference—I saw it the last Monday I was here.

16 Q. Where did you see it then?

A. I don't answer that.

17 Q. In whose possession was it when you last saw it?
(Same objection.)
A. I don't answer that.

The counsel for Killian et al. here wishes the examiner to note that after the witness had answered, counsel for compl't addressed the witness to know whether he intended the words "don't" or "won't."

Counsel for complainant says that is correct, and asks this question:

18 Q. In your answer to question No. 10 of your examination today you say, "I don't answer that question;" and in answer
58 to the 12th question you say, "As same as on Monday; I cannot answer those questions;" and in answer to question No. 16 you say, "I don't answer that;" and in answer to question 17 you say, "I don't answer that." Do I understand you that you decline to answer those questions?
(Question objected to for uncertainty, obscurity, and prolixity.)
A. What I mean to say, I don't want to answer those questions.
Q. Do you refuse to give any further answer?
(Objected to as leading and impertinent, and as not material to any issue in the case, and indefinite—relating to all the testimony in the case.)
A. I refuse to answer any question on that point.
Q. Did you, between the time you were served with the *spa duces tecum* on Monday and the following day, have any conversation with any of the parties to this suit, or any one interested in its result, as to your answers here, and if so, with whom?
(Objected to for the reason that neither time, person, or place is named with whom any conversations may have taken place.)
59 A. Of course I talked to some of the church members. I won't tell the names.
Q. Why don't you tell the names?
A. I won't tell that.
Q. Did any of those church members that you conversed with advise you to put the book called for in the subpœna out of your possession?
A. I never had it in my possession, and no one never advised me to put it out of my possession.
Q. Did any of those parties with whom you conversed tell you what answers you should give here in relation to that book?
(Objected to as offensive, improper, and disrespectful to the witness.)
A. No, sir.

X-examined by Mr. NORRIS:

Q. How old are you?
A. I will be 50 years old next month.
Q. How long have you lived in Washington?

A. Since 1853.
Q. What has been your business?
A. Tailoring.

Counsel for complainant here requests the examiner to cer-
60 tify the questions propounded at this session to the court for its decision.

Whereupon the same is hereby certified as directed.

JNO. A. CLARKE,
Examiner.

61 *Testimony for Pl'tff.*

Extracts from deed recorded liber "B" No. 2, fol. 121, 131, 132 and 137.—Filed Jan. 27th, 1880.

P. 121, liber B No. 2.

At the request of the commissioners appointed under the act of Congress for establishing the temporary and permanent seat of the Government of the United States "the following certificate of the allotment and assignment of Carrollsburg and Hamburg was recorded the 3d day of November, 1794."

We, Thomas Johnson, David Stuart, and Daniel Carroll, commissioners appointed by virtue and in pursuance of the act of Congress for establishing the temporary and permanent seat of the Government of the United States, do hereby certify that in pursuance of and according to the act of assembly of the state of Maryland entitled "A further supplement to the act concerning the territory of Columbia and the city of Washington," on the thirtieth day of January, one thousand seven hundred and ninety-four, we did appoint the twentieth day of March, then next following, for the allotment and assignment of one-half of the quantity of each lot of
62 ground in Carrollsburg and Hamburg, and that notice thereof was published in the Annapolis, the Easton and Georgetown newspapers, and Angel and Sullivan's newspaper, that being one of the newspapers of Baltimore town, for at least three weeks; we did meet and proceed to the allotment and assignment of ground within the said city on the said twentieth day of March, one thousand seven hundred and ninety-four, and therein did proceed at convenient times of our meetings till the whole was finished, no proprietor of any lot having objected in person or by writing delivered to us or either of us against our so proceeding as to his lot, and that we did so allot and assign for and instead of the lots in Carrolsburg the following and respective lots in the city of Washington, to wit:

* * * * * * * *

P. 131.

And that we did also so allot and assign for and instead of the lots in Hamburg the several and respective lots in the city of Washington, to wit:

* * * * * * * *

P. 132.

63 For lot numbered seventy-five in Hamburg, the lot numbered nine in square eighty. * * *

And we do hereby direct that an entry be made by the clerk for recording deeds of lands within the said territory, of all and every of the said allotments and aesignments in the book provided and kept by him, according to the acts of assembly in such case made and provided.

This certified and directed this twenty-sixth day of June, in the year of our Lord one thousand seven hundred and ninety-four.

TH. JOHNSON,
DA. STUART,
DAN'L CARROLL,
Comm'rs.

This is to certify that the within is a true and verified copy of extracts of a deed as recoded in liber B No. 2, fol. 121, 131, 132 and 137, one of the land records for the district of Columbia.

Washington, D. C., January 2d, 1880.

[SEAL RECORDER OF DEEDS.] GEO. F. SCHAYER,
Dep. Recorder.

64 *Motion for Rule to take Testimony on behalf Defendants.*—Filed Feb. 4th, 1880.

In the Supreme Court of the district of Columbia, Feb'y 4th, 1880.

JOHN W. EBBINGHAUSE
vs. } Eq.—No. 5688.
JOHN GEO. KILLIAN et al.

And now comes the defendants, August Siever, Edward Kolb, and Ludwig Freund, trustees of the 1st Reformed Church in the above-entitled cause, and by their solicitor, P. E. Dye, moves for and order to take testimony on behalf of themselves, as one set of defendants in said cause, the complainant having closed his evidence in chief.

P. E. DYE,
Solicitor for August Sievers et al.

65 *Testimony of Def'ts Ordered Taken in 20 Days.*—Filed Feb. 13th, 1880.

In the Supreme Court of the district of Columbia, Feb'y 7, 1880.

JOHN W. EBBINGHAUSE
vs. } Eq.—No. 5688.
JOHN GEORGE KILLIAN.

On motion of P. E. Dye, solicitor for August Siever et al., trustees of the First Reformed Church, one set of defendants in the above-entitled cause, it is ordered, adjudged, and decreed as follows, viz.:

That the defendants, August Seivers et al., trustees of the 1st Reformed Church, have the first twenty days from and after the date of this order in which to take testimony on their behalf in said cause.

CHAS. P. JAMES,
Justice.

We assent to the above order.

CUPPY & INGERSOLL,
Sol. for Comp.

Feb'y 7, 1880.

66 *Order of Extending Time for Taking Testimony.*—Filed Mar. 5th, 1880.

In the Supreme Court of the district of Columbia, the 5th day of March, 1880.

JOHN W. EBBINGHAUSE
vs.
JOHN GEORGE KILLIAN et al. } Eq.—5688.

On motion of the solicitor for the defendants, August Seivers et al., trustees of the 1st Reformed Church, it is ordered, adjudged, and decreed that the time for taking the testimony on behalf of the above defendants be and hereby is extended for the period of eight days after this day.

A. B. HAGNER,
Ass't Justice.

5 March, 1880.

67 *Notice of Motion to Limit Time to Close Testimony.*—Filed April 17, 1880.

In the Supreme Court of the district of Columbia, holding a special term.

EBBINGHAUSE, JOHN W., compl't,
vs.
KILLIAN, J. J., et al., def'ts. } In equity.—No. 5688.

Take notice that I shall on Saturday next, April 17th, 1880, move the court to limit the time within which the testimony must be closed in this case.

Resp'c't'y, HENRY WISE GARNETT,
Sol'r for def'ts Killian et al.

F. P. CUPPY,
Sol'r for Compl't.

P. EDWIN DYE,
Sol'r for Def'ts.

Service acknowledged this 14th Ap'l, 1880.

CUPPY & INGERSOLL,
Sol. for Comp'l't.

P. E. DYE, *Att'y.*
April 15, 1880.

68 *Order that Def'ts Close Testimony in 20 Days & Comp't Close His Within 5 Days After the Expiration of said 20 Days.*—Filed April 17, 1880.

In the Supreme Court of the district of Columbia, holding a special term.

JOHN W. EBBINGHAUSE
vs.
T. J. KILLIAN et al. } In equity.—No. 5688.

This cause coming on to be heard, on the motion of Henry Wise Garnet, solicitor for T. J. Killian, John Schenck, and John Schneider, trustees, to limit time to close the testimony—

It is, this 17th day of April, A. D. 1880, ordered that the defendants shall close their testimony within 20 days from this date, and the complainant shall close his testimony within five days from the expiration of the said twenty days.

A. B. HAGNER,
Ass't Justice.

69 *One Deposition and 46 Exhibits.*—Filed April 26, 1881.

In the Supreme Court of the district of Columbia.

JOHN W. EBBINGHAUSE
vs.
JOHN GEORGE KILLIAN et al. } No. 5688, Eq. Doc. 17.

At an examination held before me, an examiner in chancery, commencing and ending on the tenth day of March, A. D. 1880, the within named witness, George B. Russell, was produced on behalf of the defendants August Siever, Edward Kolb and Ludwig Freund, trustees, and after being duly sworn the within deposition was written down by me, read to the witness and by him signed in my presence. Col. P. E. Dye appeared for the defendants Seiver, Kolb and Freund. No appearance on the other side.

JNO. A. CLARKE, *Examiner.*

Accompanying this deposition are 46 exhibits rivetted together, marked "J. A. C." No. 1.

CLARKE, *Examiner.*

70 In the Supreme Court of the district of Columbia.

EBBINGHAUSE
vs.
KILLIAN et al. } No. 5688, Eq. Doc. 17.

Take notice that on Friday, March 12, 1880, at 11 o'clock a. m. of said day, at the office of Jno. N. Oliver, esq., No. 458 La. ave.

N. W.; I shall proceed to take the testimony of witnesses on the call of the defendants August Sievers et al.

JNO. A. CLARKE, *Examiner.*

Service of above acknowledged this 10th, 1880, March.

I have read this notice, but protest against any testimony under the order extending the time in this case, as it was obtained without any notice to the only parties in interest, Killian et al., trustees, parties to this cause.

JOHN E. NORRIS,
HENRY WISE GARNETT,
Sol'rs for Killian et al., Trustees.

71 In the Supreme Court of the district of Columbia.

EBBINGHAUSE *vs.* KILLIAN et al. } No. 5688, Eq. Doc. 17.

Defendants Sievers et al. Testimony.

Mar. 10th, 1880. Met pursuant to notice. Present: Col. Dye, counsel for August Sievers et al., trustees, defendants; but, owing to absence of Mr. Norris, the hearing was further adjourned to March 12th, 1880, at 11 o'clock a. m., and notice thereof in writing was served upon Messrs. Norris and Garnett, counsel for defendants Killian et al.

Mar. 12th, 1880. Met pursuant to adjournment. Present: Col. Dye.

Whereupon, Rev. GEORGE B. RUSSELL, D. D., a witness of lawful age, produced on behalf of def'ts Sievers, et al., being sworn, says:

Examined by Col. Dye:

72 I am a resident of this city, having lived here over two years, and am a minister of the Gospel of the Reformed Church of the United States. I have been engaged in this city as a missionary and formerly served some five missions at Pittsburg and Philadelphia. I have also been engaged in the publishing interest of the Reformed Church, as editor of the "Pastor's Helper"—then as book editor at Philadelphia—and as one of the editors of the "Reformed Messenger," and afterwards as editor of the "Reformed Era." I am acquainted with the general history of the Reformed Church of the United States, from the beginning of the labors of Michael Schlatter in 1746 to the present period. That acquaintance extends especially to the states of Pennsylvania, Maryland and Virginia. The distinctive name of the church has not been the same throughout this period. The general name for a long time was the German Reformed Church. It is now the Reformed Church in the United States. In certain localities and at different times it was unofficially designated by other names, such as High Dutch, German

Presbyterians, Calvinists and Sacramentarians. Under the general denomination "Calvinists" was also included the term "German
73 Calvinists," and particular local organizations were denominated "Societies."

The title to property belonging to the church has often been used and designated by one or the other of these terms, as, for instance, in Adams county, Pennsylvania, Sommersett county, same state, and at Pittsburgh, Pa., some portions of Maryland and Virginia.

I would say that the Reformed Church in the United States to-day is the only historical successor of the church designated by the above names. I would say that I am acquainted with the publication of Rev. Dr. H. Haubaugh, covering the life and labors of the Rev. Michael Schlatter, as also the lives of the fathers of the Reformed Church, the last being in three volumes, and of the historical introduction to the Heidelberg Catechism and Doctor Heiner's first volume of Mayer's Church History, and I have also published a book called Creed and Customs of the Reformed Church. These publications are regarded as standard authorities in the church in regard to matters of which they treat.

There is also a standard work published by the Reformed Church directly called the "Tercentenary Monument."

74 The explanation for these different names may be found in the peculiar circumstances connected with the history to which they refer. High Dutch, for instance, distinguished them from the Low Dutch or Reformed Church of Holland. The German Presbyterians distinguished them from the English Presbyterians; Calvinists distinguished them from the Lutherans and Arminians. In regard to these designations where donations were made by the same party, they distinguished between the Lutheran and Reformed, calling them the two religious societies, as those who adhered to the Augsburg Confession on the one part and the Calvinists or German Presbyterian on the other part. In many places their church properties were held in common and called union churches, while the rights and titles of each were separate and distinct. Sometime a minister of one of these denominations served both interests for a time, and then by a standing rule, when a vacancy occurred, a minister was chosen to succeed him from the opposite denomination. Each, while in charge, was bound to respect the denominational rights of the other party, especially in instructing the children
75 in the catechism of the separate confessions and confirming them to the church of their parents. This was more especially the case in the early periods of the church's history in this country.

The origin of the Lutheran and Reformed churches rests in the common ground of the Reformation. The Lutheran symbols culminating in the book of concord were not accepted by a large part of the Reformation, which received, on the other hand, the doctrine of Calvin; hence they were called Calvinists. Calvinism accordingly

entered largely into the confessional book of the Reformed Church, called the Heidelberg catechism. Those Protestants of Germany and adjacent countries who rejected the extreme Lutheran teachings generally were called Reformed, or by one of the terms above designating that denomination. There was a well-defined type of the Reformed Church which embraced those designated by the above several names, as High Dutch, Calvinists, German Presbyterians, &c., &c. These generally are now comprehended in what has become crystalized in the more defined self-conscious characters of the
76 Reformed Church in the United States. The members of this church in the United States in the colonial times were mainly Germans, this being particularly the case in New York, New Jersey, Pennsylvania and Virginia. In 1863 the word "German" was dropped from the legal designation of the church, because it had outgrown that designation by the fact that the descendants and successors of the original members are now mainly English.

GEO. B. RUSSELL.

Sworn to and subscribed before me this 12th day of March, A. D. 1880.

JNO. A CLARKE,
Examiner.

Whereupon Col. Dye offers in evidence forty-six paper writings purporting to be receipts of the trustees, John George Killian et al., for money paid by Geo. Hoffman for the rent of the premises in controversy, amounting in the aggregate to $1,293.41, the same being rivetted together and marked Exh. J. A. C., No. 1.

77 WASHINGTON, *Sept. 22nd*, 1866.

Received of George Hoffman forty-six 25-100 dollars for 3 m'ths' ground rent from the 22nd of June to the 22nd of September, 1866.
$46.25.

The trustees of the German Ev. Church.

JOHN JOACHIM.
JOHN SCHNEIDER.

WASHINGTON, *Dec. 22nd*, 1866.

Received of Mr. George Hoffman forty-six 25-100 dollars for ground rent from the 22nd of September to the 22nd of December, 1866.

The trustees of the German Ev. Church.
$46.25.

JOHN JOACHIM.
JOHN SCHNEIDER.

WASHINGTON, *March 22nd*, 1867.

Mr. G. Hoffman.

To the German Ev. Church congregation.

To $46.25 ground rent for three months, from the 22nd of December, 1866, to the 22nd of March, 1867.

Received payment in full up to date.
The trustees:
JOHN JOACHIM.
JOHN SCHNEIDER.

78 WASHINGTON, *June 22nd*, 1867.

$46.25.

Received of G. Hoffman forty-six 25-100 dollars in full for ground rent from the 22nd of March to the 22nd of June, 1867.
The trustees of the German Ev. Church.
JOHN JOACHIM.
JOHN SCHNEIDER.

WASHINGTON, *September 23rd*, 1867.

Received of George Hoffman forty-six 25-100 dollars for ground rent, being in full for 3 months from the 21st of June to the 21st of September, 1867.
The trustees of the Germ. Ev. Church.
$46.25.
JOHN JOACHIM.
JOHN SCHNEIDER.

WASHINGTON, *Nov. 22nd*, 1867.

Received of G. Hoffman $20.85 for two months' ground rent in full, from September 22nd to November 22nd, 1873.
The trustees of the German Ev. Union Church.
JOHN SCHNEIDER.

79 WASHINGTON, *Dec. 23rd*, 1867.

George Hoffman
To the Germ. Ev. Church congregation for three months' ground rent, from the 22nd of September to the 22nd of December, 1867.
Received payment,
The trustees:
$46.25.
JOHN JOACHIM.
JOHN SCHNEIDER.

WASHINGTON, *March 23rd*, 1868.

George Hoffman
To the German Ev. Church $46.25 for three months' ground rent from the 22nd of December, 1867, to the 22nd of March, 1868.
Rec'd payment.
The trustees:
JOHN JOACHIM.
JOHN SCHNEIDER.

80 WASHINGTON, *June 22nd*, 1868.

Geo Hoffman
To the German Ev. Church for ground rent from the 21st of March to the 21st of June, $46.25.

Rec'd payment.
The trustees:
JOHN JOACHIM.
JOHN SCHNEIDER.

WASHINGTON, *Dec.* 22*nd*, 1868.

Mr. Geo. Hoffman
To the trustees of the German Ev. Church for ground rent from the 22nd of Sept. to the 22nd of December, $46.25.
Rec'd payment.
The trustees:
JOHN JOACHIM.
JOHN SCHNEIDER.

WASHINGTON, *March* 22*nd*, 1869.

Mr. Geo. Hoffman
To the German Ev. Church congregation.
To ground rent for three months, from the 22nd Dec., 1868, to date, $46.25.
Received payment by the trustees.
JOHN JOACHIM.
JOHN SCHNEIDER.

81 WASHINGTON, *June* 22*nd*, 1869.

Mr. G. Hoffman
To the trustees of the German Ev. Church for ground rent from March 22nd to June 22, '69, $46.25.
Received by the trustees.
JOHN SCHNEIDER.
JOHN JOACHIM.

WASHINGTON, *Dec.* 22*nd*, 1869.

Received of G. Hoffman forty-six 25-100 dollars in full for ground rent from Sept. 22nd to Dec. 22nd, 1869.
The trustees of the German Ev. Church.
JOHN SCHNEIDER.
JOHN JOACHIM.

WASHINGTON, *March* 22*nd*, 1870.

Mr. G. Hoffman
To the German Ev. Church for ground rent from the 22nd of Dec., 1869, to the 22nd March, 1870. $46.25.
Received payment.
The trustees.
JOHN JOACHIM.
JOHN SCHNEIDER.

82 $46.25-100.] WASHINGTON, *June* 22*nd*, 1870.

Received of G. Hoffman forty-six 25-100 dollars for 3 months' ground rent from March 22nd to June 22nd, 1870.
The trustees of the German Ev. Church.
5 JOHN SCHNEIDER.

$46 25-100.] WASHINGTON, *Sept. 22nd*, 1870.

Mr. George Hoffman

To the German Ev. Church congregation for ground rent from June 22nd to Sept. 22nd, 1870, forty-six 25-100 dollars.

Received payment.

The trustees. JOHN SCHNEIDER.

WASHINGTON, *December 22nd*, 1870.

Mr. G. Hoffman

To the German Ev. Church for 3 months' ground rent, $46.25, from Sept. 22 to Dec. 22nd, 1870.

Received payment.

The trustees. JOHN JOACHIM.
JOHN SCHNEIDER.

83 WASHINGTON, *March 22nd*, 1871.

George Hoffman

To the trustees of the Germ. Ev. Church, $46.25 for ground rent from Dec. 22nd, 1870, to March 22nd, 1871.

Received payment.

The trustees. HENRY KAISER.
JOHN SCHNEIDER.

WASHINGTON, *April 22nd*, 1871.

Received of George Hoffman $10.41 for ground rent for one month from March 22nd to date.

The trustees of the German Ev. Church.

JOHN SCHNEIDER.
HENRY KAISER.

WASHINGTON, *May 22nd*, 1871.

Received of George Hoffman $10.41 for one month's ground rent from the 22 of April to the 22nd of May, 1871.

The trustees of the German Ev. Church.

JOHN SCHNEIDER.
HENRY KAISER.

84 WASHINGTON, *June 22nd*, 1871.

Received of Mr. George Hoffman $10.42 for one month's ground rent from May 22nd to June 22nd, 1871.

The trustees of the German Ev. Church.

JOHN SCHNEIDER.

WASHINGTON, *July 22nd*, 1871.

Received of Mr. Hoffman $10.41 for one month's ground rent up to date.

The trustees of the German Ev. Church.

JOHN SCHNEIDER.

WASHINGTON, *August* 22*nd*, 1871.

Received of Mr. Hoffman $10.41 for one month's ground rent from July 22nd to date.

The trustees of the German Ev. Church.

JOHN SCHNEIDER.

WASHINGTON, *September* 22*nd*, 1871.

Received of Mr. Hoffman $10.43 for one month's ground rent from Aug. 22nd to date.

The trustees of the German Ev. Church.

JOHN SCHNEIDER.

WASHINGTON, *October* 22*nd*, 1871.

Received of Mr. Hoffman ten 42-100 dollars for one month's ground rent in full from Sept. 22nd to date.

$10.42-100.]

85 WASHINGTON, *November* 22*nd*, 1871.

Received of Mr. Hoffman ten 41-100 dollars in full for one month's ground rent from October 22nd to date.

The trustees of the German Ev. Church.

$10.41.

WASHINGTON, *December* 22*nd*, 1871.

Received of Mr. Hoffman ten 41-100 dollars for one month's ground rent in full from November 22nd to date

The trustees of the German Ev. Church.

$10.41.

WASHINGTON, *May* 22*nd*, 1872.

Received of George Hoffman $10.42 for one month's ground rent in full up to date.

Trustees of the German Ev. United Church.

JOHN SCHNEIDER.

WASHINGTON, *June* 22*nd*, 1872.

Received of George Hoffman $10.41 for one month's ground rent in full up to date.

Trustees of the German Ev. United Church.

JOHN SCHNEIDER.

86 WASHINGTON, *July* 22*nd*, 1872.

Received of George Hoffman $10.41 for one month's ground rent in full up to date.

Trustees of the German Ev. Church.

JOHN SCHNEIDER.

$10.40. WASHINGTON, *Aug. 22nd*, 1872.

Received of Chr. Hoffman $10.40 for three months' ground rent in full to date.

The trustees of the German Ev. Church.

JOHN SCHNEIDER.

WASHINGTON, *June 23rd*, 1873.

Received of Mr. C. Hoffman $20.83 in full for two months' ground rent from April 22 to June 22, 1873.

The trustees of the German Ev. Un. Church.

JOHN SCHNEIDER.

WASHINGTON, *Aug. 22nd*, 1873.

Received of Mr. G. Hoffman twenty 83-100 dollars in full for ground rent from June 22nd to Aug. 22, 1873.

JOHN SCHNEIDER.

87 WASHINGTON, *December 22nd*, 1873.

Received of Mr. Hoffman $20.83 in full for two months' ground rent from October 22nd to date.

The trustees of the German Ev. Church.

JOHN SCHNEIDER.

WASHINGTON, *Feb. 22nd*, 1874.

Received of Mr. Hoffman $20.82 in full for two months' ground rent from Dec. 22nd 1873, to Feb. 22, 1874.

The trustees of the German Ev. Un. Church.

WASHINGTON, *June*, 1874.

Received of Mr. Charles Hoffman twenty dollars and eighty-three cents for two months' rent from the 22nd of February to the 22nd of April, 1874.

JOHN SCHNEIDER.

WASHINGTON, D. C., *July 6th*, 1874.

Received of Mr. George Hoffman twenty dollars and eighty-two cents for two months' ground rent from the 22nd of April to the 22nd of June, 1874.

$20.82. JOHN SCHNEIDER.

WASHINGTON, D. C., *September*, 1874.

Received of Mr. George Hoffman the sum of twenty dollars and eighty-two cents for two months' ground rent from the 22d of June to the 22nd of Aug., 1874.

$20.82. JOHN SCHNEIDER.

88 Received, Washington, Nov. 2d, 1874, of George Hoffman, twenty-two dollars and eighty-two cents for two months' ground rent from August 22nd to Oct., 1874.

JOHN SCHNEIDER.

Received, Washington, Feb., 1875, of George Hoffman, twenty dollars and eighty-two cents for two months' rent from the 22nd of Oct. up to the 22d of December, 1874.

JOHN SCHNEIDER.

WASHINGTON, *July 10th*, 1875.

Received of George Hoffman twenty dollars and eighty-one cents for two months' rent from the 22nd of Feb. up to the 22nd of April, 1875.

W. KETTLER.

WASHINGTON, *May 16th*, 1875.

Received of George Hoffman twenty dollars and eighty-two cents for two months' rent from the 22nd December, 1874, up to the 22nd February, 1875.

JOHN SCHNEIDER.

89 WASHINGTON, *August 2nd*, 1875.

Received of George Hoffman twenty dollars and eighty-two cents for two months' rent from the 22 of April up to the 22nd of June.

Received payment, W. KETTLER.

WASHINGTON, *August 2nd*, 1875.

Received of George Hoffman twenty dollars and 82-100 eighty-two cents for two months' rent from the 22nd of June up to the 22nd of August.

Rec'd payment, WM. KETTLER.

WASHINGTON, *Oct. 2nd*, 1875.

Received of George Hoffman twenty dollars and eighty-two cents for two months' rent from the 22nd of August up to the 22nd of October, 1875.

WM. KETTLER.

WASHINGTON, *December 22nd*, 1875.

Received of George Hoffman twenty dollars and eighty-one cents for two months' rent from the 22nd of October up to the 22nd of December, 1875.

WM. KETTLER.

90 *Depositions behalf Defendant.*

In the Supreme Court of the district of Columbia.

EBBINGHAUS *vs.* KILLIAN et al. } 5688. Eq. doc. 17.

At an examination held before me, an examiner in chancery, commencing on the 20th and ending on the 29th March, A. D. 1880, the within named witnesses, John G. Schultz, John Walter, sr., Michael Lanxmann, and Christian F. Henry, were produced on the call of John G. Killian et al., def'ts, trustees, and after being duly sworn by me, the within depositions were written down by me from the statements made by the said witnesses, read to them, and by them signed in my presence.

Messrs. Jno. E. Norris & H. Wise Garnett appeared for the def'ts Killian et al., trustees, Judge F. P. Cruppy for complainant, and Col. P. E. Dye for def'ts Sievers et al., trustees.

JNO. A. CLARKE,
Examiner.

91 *Notice of examiner of the time and place of taking testimony.*

In the Supreme Court of the district of Columbia.

EBBINGHOUSE *vs.* KILLIAN et al. } No. 5688. Eq. doc. 17.

Please take notice that on Saturday, March 20th, 1880, at the hour of two o'clock p. m. of said day, at the office of Henry Wise Garnett, esq., (Columbian Law Building,) I shall proceed to take the testimony of witnesses on the call of defendants Killian et al.

JNO. A. CLARKE,
Examiner.

Service of above acknowledged this 18th day of Mar., 1880.

F. P. CUPPY,
Sol. for Complainant.

92 In the Supreme Court of the district of Columbia.

EBBINGHOUSE *vs.* KILLIAN et al. } No. 5688. Eq. doc. 17.

MARCH 20TH, 1880.

Met pursuant to notice.

Present: Mr. Garnett, of counsel for defendant Killian et al., trustees, and Col. P. E. Dye, of counsel for defendants Sievers et al., trustees.

Deposition of Jno. G. Schultz.

Whereupon JOHN G. SCHULTZ, a witness of lawful age, produced on behalf of defendant Killian et al., trustees, being sworn, says:

Exam'd by Mr. GARNETT:

I am in sixty-seventh year. I have lived in Washington since 1843, the 7th day of March. I know that there is a church called "Concordia Church" in this city. It is at the corner of G and 20th sts. n. w. I am a member of that church, and have been
93 such since 1842. The members of that church are all Germans, and were so in 1842. That was the only German church that I knew of in this city in 1842. The sect to which the members of that church adhered called themselves in English "Calvins," and in German "Reformed," and as well as Lutheran, as I understood the Calvin is one and the Lutheran is another.

Q. How long, in your recollection, has the German Concordia Association had possession of this property?

A. From the commencement; as I understand, the congregation organized in that way from the commencement.

Q. About what year was that, to your best recollection?

A. I can't in that respect go further back than 1842. Before that I was not here.

Q. State from that time forward to the present, what congregation of Christians had possession of that property?

94 A. The Lutheran & Reformed.

Q. Did they go by any other name?

A. I don't know any other name except those two. They called themselves "Concordia."

Q. Do you know who have paid the taxes upon that property—lot 9 and sq. 80—since you became connected with and was a member of that church?

A. I had nothing to do with the paying of taxes and things like that; that belonged to other officers.

Q. Have you any knowledge whether the other officers paid the taxes on that property? If so, state what it is.

A. I had nothing to do with paying taxes and things like that. Other officers attended to that.

X-examined by Col. DYE:

Q. You say that your knowledge of this church extends
95 only from 1842, when you became a member. Do you mean to say that the church, as at present constituted, is composed of two separate denominations, namely, Lutherans and Reformed, or Calvinists?

A. So it was then and it is now; there is no change in it.

Q. Don't you know that the Lutherans withdrew from that society and built a church on the east side of the Judiciary square?

A. If you want to know how that turns out I will explain it; I

will give it as well as I can. It was, I am not positive now, in 1842 or '43; it was one of those two years. We had a pastor named Velvant; he came up once and want the congregation to turn only Lutheran. The congregation had a meeting after that and took a vote on that matter. The members were ready to vote on that matter. They laid up a sheet of paper and the members got called upon to vote upon that. The members were told if they
96 wanted Lutherans, to write their names down on that side; and if they wanted it as it was originally organized and had stood, to write down their names on the other side. The result was from the vote: two of the members voted for Lutherans, and all the rest of the members voted to keep together as they were. The pastor told them as they had refused to form themselves "Lutheran" he would not be their pastor any more; and he left and the two that voted "Lutheran" left also and went down and made up that church there.

Q. Do you mean to say that no other of the congregation went along with them?

A. Only those two that I know. If others left afterwards I don't know anything about it.

Q. Do you know the name of any Lutheran who remained
97 with the old congregation as organized? If yea, state who.

A. There is old Lanxmann, and Mr. Henry who sits there, (pointing to a party sitting in Mr. Garnett's office.) That is all I recollect at present.

Q. Don't you know that afterwards there was a reformed congregation organized from those holding the reformed faith in that church?

A. No, sir; I understand the question—we never had a split.

Q. Don't you know that afterwards there was a reformed congregation and church organized in the city of Washington, when those of the reformed faith in the old congregation or a large number of them withdrew, and joined with the new congregation?

A. I don't know; I know this much, we never had any split.

98 Q. Do you know the name of any person who holds to the reformed faith, that is the doctrine of Calvin's, as expounded in the Reformed Church, who is still a member of your church?

A. I don't know, and can't tell where all those members come from.

Q. Are you "Lutheran" or "Reformers"?

A. I am Lutheran.

Q. Does your church, corner 20th & G sts., hold to the Lutheran or Reformed doctrine?

(Objected to.)

A. As I take it, there is not precisely Lutheran or Reformed; it is mixed up. What I mean by "mixed up" is what I said before; when the Lutherans go to communion they get the hastian and the Reformed take the bread; still, in that congregation, the Lutherans

and Reformed take the bread altogether, and not the bastian.

99 Q. You have said that from the commencement the church on 20th and G st. organized as the German "Concordia Association;" you don't mean to say that you know that of your own knowledge?

A. I know it only from what I heard.

Q. Has the congregation always had the same name and the same organization since you have been with it?

A. Yes.

Re-direct:

Q. Who told you this church was so organized?

A. The members of it when I joined it.

J. G. SCHULTZ.

Subscribed and sworn to before me this 20th day of March, A. D. 1880.

JNO. A. CLARKE,
Examiner.

100 *Deposition of John Walter, sr.*

JOHN WALTER, sr., a witness of lawful age, produced on behalf of defendants Killian et al., trustees, being sworn, says:

Exam'd by Mr. GARNETT:

I am 59 years and seven months old, and reside at No. 1011 E st. n. w., in this city, and my occupation is that of cabinetmaker. I have lived here since the month of May, 1842; I know the church corner of 20th & G sts., in this city, known as the "Concordia;" I joined it ever since I have been here. The church was composed originally from the Lutheran and Presbyterian, called "Calvinists," together forming a congregation; I am a Calvinist, called the reformed. I know from what some of the oldest members told me—Eckloff and others, who are now all dead—that the congregation was small and not able to build a church each, and united and built that church and called it Concordia. They told me it was organized in 1833.

101 Q. Of what denomination or sects is the church at present composed?

A. The Calvinists & Lutherans together.

Q. Has there been any change in the congregation in that church as regards sects, since you have joined it up to the present time?

A. There has not been; but one pastor tried to do it once, by the name of Vevant; it was the second pastor since I joined the congregation.

Q. What did he try to do?

A. He tried to make an old Lutheran Church out of it.

Q. What was the result of his attempts?

A. The result was that the congregation taken a vote upon the subject and he didn't succeed the way he wanted it. The members didn't want to make any change in the plan it was built upon,
102 and he then resigned, saying he would not be their pastor any more. I was in church the same day he made this statement, and I heard it.

Q. Do you know lot 9, sq. 80, the ground about which this suit is?

A. I do.

Q. How long has that lot been in possession of Concordia Church?

A. Ever since I belonged to the congregation as I recollect.

Q. Do you know who paid the taxes on that lot?

A. Yes; the treasurer of our congregation, who always was appointed to attend to these matters.

Cross-examined by Col. DYE:

Q. You have said the congregation was small and not able to build a church each. What do you mean by that?

103 A. What they told me at he time. The members were not strong and many. It takes a great many to build a church; it takes money. That is what they told me that time.

Q. What do you mean by building a church each?

A. Because the nationality at that time was German; some were Lutheran, some were Calvinist. They united together to build a church upon the same principal it is now, and it is known by the name Concordia.

Q. Then you mean to say that neither the Lutherans nor Calvinists were able separately to build churches for themselves?

A. I do.

Q. You said that there was a pastor who tried to make your church all Lutherans and that he didn't succeed. Don't you know
104 there was a pastor who tried to make it all Reformed or Calvinist?

A. Not as I know of. There was no difficulty about it afterwards.

Q. Where is lot 9 in sq. 80 in this city?

A. We have got two lots. I forget which is it. One is at the corner of 20th and G, southeast corner, and the other is on the corner of 22d and G sts. n. w., at the southeast corner.

Q. Do you know the lot which is the subject of controversy in this suit? If so, describe it.

A. It is the lot corner of 22d and G sts.

Q. Do you know whether that is lot 9, sq. 80?

A. If I had the plat here I could tell you exactly, or the receipt bills.

Q. You say in your direct examination that you know lot
105 9, sq. 80, which is the subject matter of this controversy; where is it?

A. Corner of 22d and G sts. n. w.

Q. Do you know when the trustees of Concordia Church first began to rent the property on 22d and G sts.?

A. At that time I wasn't much acquainted with the business and hadn't much to do with the affair. I know of a man named Swartz, who was a trustee, he leased it to a man in Georgetown, who had a wood yard upon it for a number of years. After that, during the war times, they leased it to a party who put up a couple of shanties on it, one of which was used as a bakery, and the sharties are there yet. I can't tell you exactly the year when the church first began to rent the property at cor. 22d & G sts. I always heard the old members say that they also owned another piece of ground further
up, that it belonged to the same congregation, which is the
106 same land in controversy; that is now about 42 years.

Q. Then you don't know of your own knowledge when the property in controversy was first rented out by your congregation?

A. No, sir.

Q. You have spoken of Mr. Swartz; do you mean to say that he is the first man that rented it out?

A. I don't know whether he was the first man or not.

Q. You have said that he rented it out to a man in Georgetown, when was that?

A. That was long before the war times. I couldn't exactly tell you the year; I think it was in the year of 1840 somewhere.

Q. Might it not have been in 1859?

A. I couldn't remember, I don't know. I had business of
107 my own to attend to. I don't recollect that so well.

Q. Might it not have been in 1860?

A. It must have been long before 1859, as I used to live in that neighborhood and passed the property frequently. It was long before the war.

Q. You have said you lived down by the gas-house, and that you remember passing by that lot frequently. Now when do you remember seeing that lot and knowing that it was being rented out by your society? What was the year?

A. It was in the year 1845, up to 1865.

Q. What was on that lot?

A. It was a vacant place, fenced in, a little low place where the water settled sometimes, and after it became a wood yard that was
filled up. I built a little house one time for a man named
108 Robinson, just opposite.

Q. You have said in your answer that it was a vacant lot. When was it so vacant? When was the year?

A. That was before '42 or '3.

Q. You have said it was fenced in; when was it fenced in? What was the year?

A. Couldn't tell exactly; in 1843 or '4.

Q. Do you know who fenced it in?

A. No, sir.

Q. Do you know whether your church had possession of it when it was fenced in?

A. Yes, sir; nobody else had possession of it, excepting the congregation of that church.

Q. How do you know?

109 A. Because they always leased it out to different parties from time to time.

Q. I am speaking of 1845; how do you know that they had possession of it at that time?

A. Because I heard it from the members of the congregation and the trustee.

Q. Then, all you know about it you know from hearsay, and not from your personal knowledge?

A. From the head leader of the church; I often had conversations with him on the subject; I was very well acquainted with him.

Q. What was the name of the man who told you, in either of the years 1845, '6, '7, that your church was renting that property out; I mean the head leader, as you call him.

A. Mr. Swartz, two brothers named Eckloff, Mr. Werner, old Mr. Stock, on the island.

110 Q. Do you mean to say that the persons you have named in each of these three years you have mentioned told you they were renting it out?

A. Yes; that they were leasing it; one time they gave a lease of five years, and at another ten years.

Q. Did you ever rent this property and make any collection of money for its rental; if so, what year was it, and when did the collection begin?

A. I never did rent it myself; I went once with Mr. Scherach to give the party notice who occupied it to leave the premises.

Q. What year was this?

A. In 1877.

Q. Is this all the personal knowledge you have of the occupation of the place by your church?

A. Yes, sir.

111 Q. What knowledge have you of the payment of taxes on this lot?

A. I got that much knowledge that our treasurer made yearly reports of how much he had to pay.

Q. When was the first report made and where of which you remember?

A. I don't keep any record of such things or in my head either. If I did, my head would be as large as a barrel.

Q. But you can tell us where and to whom that report was made, and what kind of report, whether it was written or verbal?

A. The report was always a written report of the treasurer, showing what money was paid out and what was taken in. The report was always made once every year in the church at the yearly meeting.

Q. Do you know whether any record is kept of that report; if so, where?

112 A. I guess there is some record kept, but I don't know where.

[Here Col. Dye requests counsel for Killian et al., trustees, to produce the record showing the payment of any taxes on that lot.]

Whereupon the hearing was adjourned to March 24th 1880, at 2 p. m.

March 24th, 1880. Met pursuant to adjournment. Present, counsel for defendants Killian et al. and defendants Seivers et al.

Whereupon the cross-examination of the witness Walter was resumed by Col. Dye.

Q. You have said your church has two lots; that some of the oldest members of the church told you this in the beginning of your connection with the church in 1842. Did they tell you how they came by these lots?

113 A. No, sir; they told me that they had been given to them by a man named Peter Funk.

Q. Didn't they tell you that one of these lots was given for the Lutheran and the other lot to the Calvinist or Reformed?

A. They didn't tell me anything about that; they said that they had been given to the German church—to the one that would first organize.

Q. Did you mean both lots to the same church?

A. Yes, sir.

Q. Now, don't you know that the lot on the corner of 22d and G st., which is the subject-matter of this controversy, was expressly given to the Calvinist society or Reformed?

A. No. They tell me anything expressly. They told me that they the lots) had been willed to them by Peter Funk in 1790 sometime, to the church that first started.

114 Q. Don't you know that the Calvinist or Reformed have always claimed that lot on the corner of 22d and G st. ever since you have known anything about the church up there?

A. Yes, sir; it has always been claimed by the Calvinists or Reformed, and have had it in their possession ever since up to this present day.

Q. Now, don't you know that the lot on the corner of 20th and G sts. was given to the Lutherans for their church by the same man, Funk?

A. They never told me that.

Q. Don't you know yourself that the lot upon which your church was built was given to the Lutherans?

A. I don't know that.

Q. You have said in your direct examination that neither the Lutherans nor Calvinists were able by themselves to build a

115 church, and hence they joined together and built a church on the corner of 20th and G sts. Now, do you mean to say that the church so formed is the Calvinist society?

A. We call it in German "Concordia," which means united.

Q. Then this Concordia is not the Calvinists, as you understand it?

A. For my part, I think I understand it so.

Q. Do you mean to be understood that you have been told by the old members of your church, or any of them, that the lot on 22d and G sts., the subject-matter in controversy, was given to the Calvinist society expressly?

A. They never expressed that word Calvinist society.

Q. Don't you remember Mr. Swartz told you so?

A. I don't know which one said it, Eckloff or Swartz.

116 Q. You have said a moment ago that the book would show the record of when and how the church was built. What book do you mean?

(Objected to as assuming what was not said by the witness.)

A. I didn't say anything about a book. You are trying to worry me in my mind. If you do that, I won't answer any more. I said nothing about a book.

Q. You have said that the Lutherans and Calvinists joined together and made one congregation, called the Concordia. Don't you know whether there is any record to show how this was done?

A. I do not.

Q. Now, am I to understand you that you have never heard it stated by any other persons, except Mr. Eckloff and Mr. Swartz, that the lot in controversy belonged to the Calvinists at any time before the bringing of this suit, say about 1874?

117 A. Sometimes four or five would be there, Mr. Werner and Mr. Sanferly; they are now all dead.

Q. What was that lot used for when your attention was first called to it?

A. At the time I saw it it was a vacant ground. It was fenced in in 1853.

Q. Were you ever a member of the consistory of your church?

A. What do you mean by consistory?

Q. I mean the officers of the church—such as the secretary, treasurer and those having control of the church?

A. Yes, sir; I was several times—I believe in 1875 or '76.

Q. Was this the first time you were a member of it?

A. In 1874 I was a member of it.

Q. Did your consistory pass a resolution at any time while

118 you were a member of it, which in substance declared that if the Calvinists or Reformed should organize and come forward at any time within ten years from the date of the passage of the resolution and pay expenses on the lot in controversy, they could have it; if not, your church would hold it?

A. I don't recollect that.

Q. Don't you know that such a resolution was passed?

A. I do not.

Q. Have you not been told so?

(Objected to as irrelevant.)

A. Well, I told you that I did not recollect.

Q Is this the first time you ever heard about this?

(Objected to as being too indefinite.)

A. This is the first time I have been called upon it.

Q. Then you have heard about it?

A. I heard that some of the members of the vestry had
119 trouble about it, put on by the same man who is now in trouble. This is the second time he put a congregation in trouble.

Q. Do you know when the resolution we have been talking about was passed?

(Objected to, as there is no proof here that the witness said any resolution was passed.)

A. What resolution do you mean?

(Counsel here explains what he refers to, and the witness, answering, says:)

A. I don't recollect that they passed any resolution like that.

Q. Do you mean while you were a member of it?

A. I don't recollect. Sometimes I would not be present.

Q. Don't you know that there is such a resolution?

(Objected to for the reason that it has all been gone over with.)

120 A. I don't know; I can't tell.

Q. Haven't you been told by the members of the consistory that there was such a resolution?

A. I don't know; I hardly ever talk about it.

Q. Have you been talking with the members of the consistory of your church, since this x-examination began, as to the particular things you should or should not state when inquired about on x-examination?

(Objected to.)

A. I have not; I didn't trouble myself about it.

Q. Your attention was called to reports of your treasurer, made annually, in relation to taxes paid on the lot in controversy. Do you know of any report showing the payment of tax upon this lot previous to 1874?

(Objected to, because no foundation has been laid for the question. The witness has not said that his attention was called as stated
121 in the question.)

A. I do not know; but the treasurer would know it; I do not attend to that business.

Q. Do you know what was done with the yearly reports made by your treasurer?

A. They were always accepted by the congregation.

Q. Does your consistory keep a record of their proceedings and transactions in a proper book of records?

A. I don't know that; I can't tell.

JOHN WALTER, SR.

Sworn to and subscribed before me this 24th day of March, A. D. 1880.

JNO. A. CLARKE,
Examiner.

Deposition of Michael Lanxmann.

MICHAEL LANXMANN, a witness of lawful age, produced and sworn on behalf of def'ts Killian et al., says:

Exam'd by Mr. GARNETT:

I am pretty nearly 75 years old; I live on North Capitol
122 and G sts. N. E.; I have lived in Washington since 1832.

Q. Do you know the church called Concordia—Evangelical—situated at corner of G and 20th sts. N. W. in this city?

A. Yes, sir; I know it. I am a member of it.

Q. How long have you been a member of it?

A. Since the church was built.

Q. Where you a member of the church at the time it was built?

A. Yes.

Q. When was that church built?

A. In 1833.

Q. Of what denomination or sects is that church composed?

A. German Evangelical—united.

Q. What religions are united in that church?

123 A. Lutherans and Reformed.

Q. Was your church composed of Lutherans and Reformed when it was first built?

A. Yes, sir.

Q. Has there been any change in it from that time to this?

A. No, sir.

Q. Has the same society had possession of that church since it was built?

A. Yes, sir.

Q. Do you know the lot that is on the corner 22d and G. st. that is in this suit?

A. Yes, sir.

Q. Who has possession of that lot?

A. Our congregation.

Q. How long have they had it?

A. I don't know how long, but I think since the church
124 has been built.

Q. Did you ever pay taxes on this lot for your church?

A. I did pay*ing* taxes.

Q. When was this?

A. I can't keep it in my head, but think it was in 1857.

Q. Did you take a receipt for it?

A. I took a receipt, but gave to the next treasurer; I was treasurer at that time.

Q. Please look at that paper and see if that is the receipt?

(The witness here looks at the paper handed him, & says:)

A. Yes, sir; that is it.

Mr. Garnett here offers in evidence the same, which is marked Exh. "K" No. 1.

125 *Exhibit K No. 1.*

Exhibit K No. 1.....	$121.93
Collector's Office.....	1.94
Washington, Nov. 7, 1857.	$123.87

EVANGELICAL CHURCH.

You are hereby notified that the sum of $121.93 has been assessed on lot 9 in square 80, as the cost of paving and curbing in front of said lot, and that unless the said amount be paid at this office within thirty days from the date hereof, interest will be charged upon it at the rate of ten per cent. per annum from the seventh inst., and the property will be sold to satisfy said tax and interest, according to law. Int. $1.94.

JAMES F. HALIDAY,
4, 1858. *Collector.*

Received payment. JAMES F. HALIDAY,
Collector.

Q. How many German churches were there in this city when yours was built?

A. None; ours was the first.

126 Q. How did it happen that the Lutherans & Reformed built a church together?

A. They built it together because they were not able to build a church each. They were too weak.

Q. Do you know who rented that lot out for the church?

A. Mr. Eckloff and Mr. Swartz.

Q. Who was treasurer at that time?

A. I was myself.

Q. Who collected the rents at that time?

A. Mr. Swartz.

X-exam'd by Col. DYE:

Q. How did it happen that all the Germans united and built a church on 20th and G sts., 1833? How did they come by the lot?

A. We had that lot.

127 Q. Where did you get that lot?

A. Somebody made us a present of it.

Q. Why didn't they build on the corner of 11th st. and Pennsylvania ave.?

A. Because we had no money to buy the ground there.

Q. Don't you know that that lot 20th and G st. was given to the Lutheran congregation?

A. I don't know that.

Q. Were you present at a meeting in the court-house (City Hall,) some time in 1832 or 1833, when the Germans in this city of the different denominations took into consideration the subject of building a church?

A. I don't know that; I couldn't remember it.

Q. Don't you know that the lot on the corner of 22d st. and
128 G was given to the Calvinists' Society?

A. I don't know.

Q. Have you ever been told who the man was who gave the lot?

A. I heard his name was Funk.

Q. Did he give a lot to the Evangelical Concordia United?

A. Yes.

Q. How do you know that?

A. I heard it from the other members.

Q. When did you hear it?

A. I don't know when.

Q. Can you give the name of any member?

A. Yes;—they are all dead—Mr. Eckloff, Mr. Swartz, who is living; Mr. Senferly; Mr. Hager, who is living.

Q. Did Mr. Stock ever tell you?

A. No, sir; I never heard anything from him.

129 Q. Now, don't you know that the lot on 22nd and G was given to one society and the lot on 20th and G another society?

A. I don't know that.

Q. Do you mean to say that both lots of which we have spoken were given to your church?

A. I don't know that either.

Q. You have said that your church was composed, in the first place, of Lutherans and Calvinists or Reformed. What denomination do you belong to?

A. I belong to the Lutheran.

Q. Were there not more Lutherans at the time the church was built than Reformed?

A. I don't know that.

Q. Do you know whether your consistory passed a resolu-
130 tion, which in substance declared that if the Reformed did not come within ten years after it was passed and pay the charges on the lot 22d and G sts. that your church would hold it?

A. I don't know that.

Adj'd to Mar. 29th, 1880, at 2 p. m.

MARCH 29th, 1880.

Met pursuant to adjournment. Present: Mr. Garnett and Col. Dye.

Whereupon the x-examination of the witness Lanxmann was resumed by Col. Dye:

Q. You have said that you have been with that church since its formation in 1833, and that it was first composed of Lutherans, Calvinists or Reformed and others, that because neither were able to build a church by themselves they agreed to unite and build a church under the name of Concordia. Is that what you mean to say?

131 A. The Evangelical German United Concordia.

Q. Then you mean that Lutherans and Reformers united and built the church on the corner of 20th and G?

A. Yes, sir.

Q. Now, what catechism do you use in the church referred to in the confirmation of the children?

A. I don't know; they have got a little catechism—a German catechism.

Q. Is it what is known as the Heidelberg catechism?

A. I don't know.

Q. Is it what is known as the Augsburg catechism?

(Objected to, as witness has twice said he did not know.)

A. I don't know.

Q. Were you confirmed before you joined that church, in

132 1833, as a Lutheran?

A. I was confirmed in Germany.

Q. Question repeated.

A. Yes, sir.

Q. Don't you know the catechism you are using now is the same one you were confirmed under?

(Objected to.)

A. I don't know that.

(Mr. Garnett here desires to note that Judge Cuppy, the counsel for the party who filed the bill in this case, has here entered the room and has held a short consultation with Col. Dye.

Whereupon Judge Cuppy desires the examiner to note that after holding the short consultation referred to that he respectfully withdrew from the room.)

Q. Then you mean to say that you don't know what doctrine is taught in the little German catechism that is used in your church?

133 A. I don't know.

Q. Did you ever read it?

A. No.

Q. Then you have no knowledge whether it is made up from the Heidleberg or Augsburg catechism?

A. I don't know.

Q. You have said in your direct examination that you were treasurer of your church at one time, and while treasurer in November 7th, 1857, you paid this receipt, marked Exhibit K No. 1; do you recogntze this as the same receipt?

A. I do.

Q. How long had you been treasurer when this was paid?

A. About six or seven years, but don't know exactly.

Q. Then you had the means of knowing the sources from which money came into the treasury, I presume?

A. I did.

Q. Did you enter up in a book of records all moneys that
134 came into your hands and the source which it came, and likewise what you did with the money when you paid it out?

A. I wrote in the book where it came from and where it went.

Q. Do you know whether you ever received money for the rent of the property in dispute up to the time of 1857?

A. I do not.

Q. Would an entry be likely to be found in the book you kept if you had received money for the rental of the property?

A. It would; I wrote in it every three months.

Q. What did you write there every three months?

A. Income and what I paid out.

Q. Do you know that you wrote in that book any time pre-
135 vious to 1857 showing how much the society received as rent from the property in dispute?

A. I did know that before.

Q. Do you know that your society or church were renting this property out on Nov. 7th, 1857?

A. I don't know that.

Q. Do you know that they ever did rent it out?

A. The trustees of the church rented it out, but I don't know when.

Q. Will the book you kept show that you paid out $123.87 on Nov. 7, 1857?

A. The books will show that.

Q. Can you produce the book?

A. I don't have the book no more; I was not the treasurer any more.

136 Q. Do you know where the book is?

A. The new treasurer has got it, or the secretary; one of those two.

(Col. Dye here requests the production of the book to verify the Exhibit "K," and also to show the sources from which the money came affecting the lot in dispute during the time the witness was treasurer of the church.)

Q. I understand you to say in your direct examination that some person by the name of Funk gave your church the lot on 20th and G and the one on 22d and G; have you got in your possession a paper writing showing how this dedication was made?

A. I don't know anything about that.

Q. Question repeated.

A. No; I don't know anything about that.

Q. Don't you remember having in your possession such a
137 paper at one time?

A. I have never had such paper in my possession; the trustees must have it. Do you mean the paper for those lots?

(Col. Dye answers yes.)

Q. Have you ever seen a paper writing pertaining to the title of these lots in the possesiion of the trustees, or others?

A. No, I never did.

Q. Were you present when the Lutherans and Reformers agreed to build the church together, as neither could build a church for themselves?

A. I was not present.

Q. But you have said they agreed to build the church together, as they were too weak to build a church each for themselves. How do you know that?

A. I was young that time; I saw myself that each party did not have money enough to build one church each for themselves.

Q. Don't you know that the Lutherans agreed when the Reformers were able to build a church for themselves on the lot 22d &
138 G, that the Lutherans would help them?

A. I don't know.

Q. You never heard any such talk?

A. I don't know anything about that.

Q. Do you remember when your church made an effort to sell the lot on 22d and G st.; I mean this lot in dispute?

A. I never knew it.

Q. You said in your direct examination that you worked on that church 20th and G; am I right about this?

A. You are correct.

Q. Then you were intimate with all the people there, and your recollection is good as to what took place there then?

A. Not with all; I was young then and didn't know half of them; it has been so long ago that I can't keep it in my mind.

Q. Have you ever been an elder in that church?

A. Yes, sir.

Q. Now, is it not the duty of the elders to watch over the confirmation of the children and know what doctrine is taught them?

A. I don't know.

139 Q. Then you don't know the duty of an elder in your church; is that what you mean to say?

A. May be I knew it before, but I am so weak in my head now that I don't know it.

Q. How long were you an elder in that church?

A. Thirty years.

Q. From what time and to what time?

A. I ceased to be an elder about two years ago.

Re-direct:

Q. Do you mean to say that you were an elder 30 years, or a member 30 years?

A. Thirty years I was treasurer.

MICHAEL LANXMAN.

Sworn to and subscribed to before me this 29th day of March, A. D. 1880.

JNO. A. CLARKE,
Exam'r.

Deposition of C. F. Henry.

CHRISTIAN F. HENRY, a witness of lawful age, produced on behalf of defendants Killian et al., being duly sworn, says:

Exam'd by Mr. GARNETT:

140 I will be 70 years old the 7th of next month; I came to Washington in April, 1841; when I came here there was only one German church, which was the German Lutheran and Reformed, now called the Concordia, 20th and G sts. n. w.

Question. Are you a member of that church, and how long have you been a member?

Answer. I am and have been since the fall of 1841.

Q. Of what denomination or sects was that church composed when you joined it?

A. There was only two parties that I know of.

Q. What were they?

A. The Lutherans and Reformed.

Q. Of what denomination is your church now composed?

A. Just the same—the Lutherans and Reformed.

Q. Has there been any change in your church since the time you joined it?

141 A. No, sir; there was once a dispute, in 1845; the pastor wanted to take the whole congregation and turn it over to the old Lutheran, but he didn't succeed. The majority went for the old Reformed and Lutheran Church. There has been no change in the church since the time I joined it.

Q. Do you know the lot on the corner of 22d and G sts., the subject of this suit?

A. I do.

Q. Do you know whether your church has had possession of that lot; if so, how long?

A. I remember in 1842, my brother, John Henry—he lived on F and 25th sts., and one Sunday morning we went together to church; when we came up to the corner of 22d and G he told me the lot belonged to our church.

Q. Did your brother hold any office in the church at that time?

A. He was one of the elders in 1842.

Q. Do you know whether your church ever rented that lot out?

142 A. I do, but don't know whether it was in 1845 or 1846.

Q. Has your church held possession of that lot ever since 1842?

A. Ever since.

X-exam'd by Col. DYE:

Q. You say you came to this city in 1841; that there was a German Lutheran and Reformed church on the corner of 22d and G at that time. Is that what you mean to say?

A. Yes, sir.

Q. Do you mean the church on 20th and G sts. is a German Lutheran and Reformed church?

A. I do.

Q. You say you joined it in 1841. Is this the way you know it is a German Lutheran and Reformed church?

A. Yes, sir.

Q. Were you a church member before you joined it; if yea, of what denomination and where were you confirmed?

A. I was; I was a Lutheran, and was confirmed in Germany.

Q. Do you know what catechism the Lutheran use?

A. I don't remember.

Q. Do you know a catechism known as the Augsburg Catechism?

143 A. Yes, sir; that is the old Lutheran. They used that down corner 4th and E.

Q. Do you know a catechism called the Heidleberg Catechism?

A. Yes, sir.

Q. Now, which of these, if either, are used in your church, corner of 20th and G sts., in the confirmation of children and new members?

A. I can't say; my sight is bad, and I don't keep up with my reading.

Q. Haven't you ever been present at these confirmations in your church, and don't you know, from hearing the children answer, which is used, if either?

A. Yes, sir.

Q. Which is used then?

A. I can't tell; they use what is called the Evangelical, because there are more Reformed members in our church than Lutherans.

Q. Now, am I to understand you that you have a catechism in your church which you call an Evangelical catechism in distinction

144 from the Augsburg and Heidleberg catechism?

A. Yes, sir.

Q. And this Evangelical catechism is the one which you use in your church?

A. Yes, sir.

Q. Then you do not use the Heidleberg catechism, as such, in your church?

A. Not that I know.

Q. Does your church go by any name; if yea, what?

A. Concordia.

Q. You say in 1842 your brother John Henry told you, one Sunday morning, as you passed along together to church, on G st., that the lot on 22d and G belonged to your church. Did he tell you how they came to own it?

A. He told me by will.
Q. Whose will?
A. Mr. Funk, I believe.
Q. Did he tell you about any other lot?
A. No; he said Van Ness made a will for the lot on 20th and G, upon which the church is built.
Q. How do you know this conversation took place in 1842?
145 A. Because it was the second year I was here working at my trade.
Q. What time of the year was it?
A. I can't tell the month.
Q. Was it in the winter or summer?
A. It was in the summer—I know that.
Q. Where did you live?
A. I lived then on 9th st., near New York ave.
Q. You say your brother pointed out the lot to you. Did you see it at that time?
A. Yes, sir.
Q. What condition was it in?
A. In commons.
Q. Do you know how long it remained in commons?
A. It was rented out—I don't know exactly—in 1845 or 1846.
Q. How do you know that?
A. I passed there and saw that they had put a fence around it and had a wood yard there.
Q. And you know this was in 1845 or 1846, do you?
A. Yes, sir.
146 Q. By what circumstance, if any, do you know it?
A. The trustees know it better.
Q. Question repeated.
A. I know it, because the theatre burned down in 1845.
Q. Now, might it not have been in 1857 when you saw it fenced in?
A. In 1857 the pavement was put down.
Q. Question repeated.
A. It was a common board fence.
Q. You have said here that your brother was an officer in the church. Is your brother living?
A. He died in 1849.
Q. Now, isn't the reason you fix upon 1845 or '46 as being the year you first saw a fence on that lot established from recent conversation upon the subject, rather than what you remember of that time?
A. The fence I saw myself; it was a fence made of old lumber; there was no conversation about it.
Q. Didn't your brother tell you that one of those lots was given for the Lutheran and the other for the Calvinists?
A. No, sir.
147 Q. Did any of the old members tell you that?
A. I never heard Calvinist in our congregation.

Q. Did any of the old members tell you that the lot on 22d and G sts. was given to the Reformed?

A. Yes, sir.

Q. Do you remember who told you?

A. Mr. Eckloff, Mr. Swartz, and Mr. Endermower.

Q. Did Mr. Swartz tell you that the reason they were renting out the lot on 22d & G was because the Reformed were not able to build at present upon it, and worshiping with them, they thought best to make the most good of the property?

(Objected to as not responsive to the examination-in-chief, and making a supposition case, of which there is no evidence to support it.)

A. He didn't tell me that.

Q. Don't you know that while your church have been renting out that lot they never claimed to own it in their own right until within the last seven or eight years?

148 (Objected to.)

A. Seven or eight years—when my brother told me it belonged to us in 1842.

Q. Do you know what kind of possession your church had of that property; that is, was it the possession of absolute ownership, as you understand it?

(Objected to, as it involves a legal proposition.)

A. As I understood it, it belonged to our church.

Q. Was your information as to ownership all derived from your brother?

A. Yes, sir; I understood our trustees paid the improvement bills and collected the rents. I have heard it from our trustees that this property belonged to our church.

his
CHRISTIAN F. × HENRY.
mark.

Sworn to and subscribed before me this 29th day of March, A. D. 1880.

JNO. A. CLARKE,
Examiner.

149 Here Mr. Garnett offers in evidence the court proceedings by which Mr. Ebbinghause was appointed trustee, No. 5684, Eq. Doc. 17, to be read on the hearing in this cause.

Whereupon the testimony Killian *et al.* was closed.

Copy proceeding in 5684.—Petition filed July 16, 1877.

In the Supreme Court of the district of Columbia the —— day of July, 1877.—In equity.

August Sievers, Edward Kolb, Ludwig Freund, trustees of the 1st German Reformed Church, Washington, D. C.

And now come the above-named petitioners in their official capacity, and by H. H. Wells, U. S. dis't att'y for D. C., respectfully

show that in the year 1793, June 28, one D. Reintizel, a citizen of Georgetown, held as trustee in trust for the "German Calvinist Society lot nine (9), in square No. eighty (80), in the city of Washington; that said lot was given by the commissioner in lieu of lot No. seventy-five (75) in the village of Hamburg, which said prop-
149*a* erty was given, granted, and set apart by one Jacob Funk, of Maryland, for religious purposes, to wit, in trust to D. Reinitzel for the use and benefit of the "German Calvinist Society."

Your petitioners further say that the "German Reformed Church" is the counterpart or legal successor of the "German Calvinist Society," and, as such, your petitioners are the only beneficiaries under said trust estate, and are entitled to all and singular of said premises for religious purposes in accordance with the intent of the original donor aforesaid; that said property has never been sold, conveyed, mortgaged, or transferred, or any part thereof, and that said trustee is dead, that his successor has never been appointed, and that the heirs of said trustee, if he have any, are unknown to your petitioners, and that the said property is valued at about four thousand dollars ($4,000). Wherefore your petitioners pray that a trustee and successor to said D. Reinitzel, deceased, may be appointed to hold the said property in trust for the "German Calvinist Society" and their legal successors for religious purposes in accordance with the intent of the original donor, Jacob Funk, aforesaid, and that Rev.
149*b* John W. Ebbinghause, pastor of the First Reformed Church of the city of Washington, D. C., may be appointed such trustee.

AUGUST SIEVERS.
EDWARD KLOB.
LUDWIG FREUND.
H. H. WELLS,
Dis't Att'y for D. C.

We do solemnly swear that we have read the petition by us subscribed and know the contents thereof, and that the facts therein stated upon our personal knowledge are true, and that the facts therein stated upon information and belief we believe to be true.

AUGUST SIEVERS.
EDWARD KOLB.
LUDWIG FREUND.

Subscribed and sworn to before me this 5th day of July, A. D. 1877.
[SEAL.] GEORGE F. GRAHAM, *Notary Public.*

149*c* In the Supreme Court of the district of Columbia the 16th day of July, 1877.

Petition of August Sievers, Edward Kolb and Ludwig Freund, trustees of the 1st Reformed Church, asking for the appointment of a trustee in the place of D. Reintzel.

This cause came on for hearing, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed as follows, viz:

That John W. Ebbinghause of Washington, district of Columbia be, and he is hereby appointed trustee in the place of and as successor to D. Reintzel, deceased, to hold as trustee lot No. nine (9) in sq. No. eighty (80) in the city of Washington, D. C., for the German Calvinist Society and their legal successors, in accordance with the intent of Jacob Funk, the original donor.

By the court. A. W.

150 In the Supreme Court of the district of Columbia.

Depositions behalf Defendant Sievers.

EBBINGHAUSE *vs.* KILLIAN et al. } No. 5688, Eq. Doc. 17.

At an examination held before me, an examiner in chancery, commencing on the 16th day of April, A. D. 1880, and ending on the 7th day of May, A. D. 1880, George Hoffmann, John G. Stock, John V. Kehl, Charles Walter, John V. Kehl (recalled), Edward C. Eckloff, Charles Schrott, Thomas Biggins and John W. Ebbinghause, the within named witnesses, were produced on behalf of defendants Sievers *et al.*, and being sworn, the within depositions were written down by me from the statements made by the said witnesses, read over to them and by them signed in my presence.

Col. P. E. Dye appeared for defendants Sievers *et al.*, Judge F. P. Cuppy for complainant, and Messrs John E. Norris and H. Wise Garnett for def'ts Killian *et al.*

JNO. A. CLARKE,
Examiner.

151 In the Supreme Court of the district of Columbia.

EBBINGHAUSE *vs.* KILLIAN et al. } No. 5688, Eq. Doc. 17.

Defendants Sievers et al. Testimony.

April 16, 1880. Met pursuant to notice. Present, counsel for complainant, counsel for defendants Sievers *et al.*, and counsel for defendant Killian *et al.*

Whereupon it is hereby agreed between counsel that the book from which Exh. J. A. C. No. 2 is extracted, exclusive of the certificate thereof, may be read in evidence on the hearing in this cause, subject to objections as to its admissibility and materiality, said book being entitled "Carroll and Hamburgh sale of lots and lands, 1792 to 1798, No. 1."

152 *Exh. J. A. C., No. 2.*

No. of L.	Proprietors' Names.	Allotment. Lot No.	Allotment. Square No.	Allotment made.
*	* * * * * *	*	*	* * *
75	For Calvinist society.....	9	80	28th June, 1793, D. Reintzel.
*	* * * * * *	*	*	* * *
183	Lutheran congregation.....	5	121	28 June, 1793, D. Reintzel.

I hereby certify that the foregoing is a true extract of the original record in this office entitled "Carroll and Hamburgh sale of lots and lands, 1792 to 1798, No. 1."

JOHN STEWART,
Clerk in charge of records in office of P. B. and grounds, U. S. Capitol.

153 Thereupon GEORGE HOFFMAN, a witness of lawful age, produced on behalf of def'ts August Sievers *et al.*, being sworn, says:

Exam'd by Col. DYE:

Question. Where do you reside and what is your business?

Answer. I live on 7th st. s. w., in this city, and am a baker.

Q. Do you know where lot 9 is in sq. 80?

A. Yes, sir.

Q. State whether or not you have ever rented that lot and lived upon it?

A. Yes, sir; I rented and lived upon it when I carried on my business as baker.

Q. Look at Exh. J. A. C., No. 1, and state whether you paid the money as shown by the receipts therein.

154 A. (The witness, looking at them, says:) Yes, sir; I paid them.

Q. Are these all the receipts on which you ever paid money for the rent of that lot?

A. I think there are a few missing, but don't know exactly how many.

Q. Do you know how much you paid altogether for the rent of that lot on 22d and G sts. to the trustees of the church corner of 20th and G. sts.? If yea, how much?

A. Yes; $1518.

Cross-exam'd by Mr. GARNETT.

Q. Of whom did you rent the lot and to whom did you pay the money?

A. From and to the trustees of the German Evangelical Concordia Church.

Re-direct:

Q. Did you take a lease from any other party for that
155 property? If yea, from whom and what was about the date of that lease?

(Objected to.)

A. I did in 1876, because I couldn't get a lease from the other party—Ludwig Freund and a man named Schrote—I don't know exactly what his first name is.

By Mr. GARNETT:

Q. Were you in possession of the property at the time you took this lease by reason of your having rented it from the German Evangelical Concordia Church, as you have testified?

A. Yes, sir.

GEO. E. HOFFMAN.

Sworn to and subscribed before me this 16th day of April, A. D. 1880.

JNO. A. CLARKE, *Examiner.*

156 JOHN G. STOCK, a witness of lawful age, produced on behalf of def'ts Seivers *et al.*, being sworn, says:

Examined by Col. DYE:

Q. You have already testified in this case, I believe, on behalf of the complainant?

A. I have.

Q. Do you know what kind of catechism is used in the church on the corner of 20th and G sts.? If so, state what it is.

(Objected to.)

A. I don't know what they use now, but know what they did use. I have one here which I gave to my grandchildren when they were confirmed in that church—one in English and one in German.

Q. When was it that you gave these books to your grandchildren to be in their confirmation in that church, corner 20th and G sts.?

157 A. I could not state the time. It might be two years since. It might be longer.

(Here counsel offers in evidence the two books referred to.

Whereupon Mr. Garnett objects to their introduction as being inadmissible and immaterial.

The same being here filed, marked Exhibit J. A. C., Nos. 3 and 4.)

Q. Will you look upon page 147, J. A. C., No. 4, and following, and tell me if that is *that* the Augsberg Confession as used in that church, corner 20th and G sts., when your grandchildren were confirmed there?

(Objected to as immaterial.)

A. If they use that catechism they must use that.

(Answer objected to for same reason.)

Q. Were you present when your grandchildren were confirmed in that church?

158 A. I was present by some of them, but not by all. When the last one was *was* confirmed there I gave him a catechism like that, and the minister took it away from him, stating that the book belonged to the church; but it was not the same minister who is there now. His name was Mr. Reitz.

Q. Do you know whether the congregation or church, 20th and G sts., is Lutheran or Reformed? If yes, which is it?

A. I don't know. We call it Concord or Lutheran—I believe Lutheran and Reformed united.

J. G. STOCK.

Sworn to and subscribed before me this 16th day of April, A. D. 1880.

JNO. A. CLARKE, *Examiner.*

159 JOHN V. KEHL, a witness of lawful age, produced on behalf of def'ts Seivers *et al.*, being sworn, says:

Exam'd by Col. DYE:

Q. How old are you and where do you reside?

A. I am sixty years; I lived at 461 M st. S. W.

Q. When did you come to reside in the city of Washington?

A. In 1843.

Q. Do you know the lot 9, square 80, cor. 22d and G sts.?

A. I don't know anything about the plot of said lot.

Q. I mean the lot the subject-matter of dispute?

A. Yes; I know the lot corner 22d and G sts.

Q. About how long have you known it?

A. Ever since I have been here in 1843.

Q. Do you remember whether that lot was enclosed when

160 you first knew it, in 1843?

A. It was not enclosed.

Q. What year as well as you can remember, or after what year, was it enclosed?

A. The first time I saw it enclosed must have been in 1851 or 1852.

Q. Did you ever belong to that church on the corner of 20th and G sts.; if yea, from what time to what time, as near as you can remember?

A. I did; from 1843 until about 1856 or 1857.

Q. What denomination is that church, if you know, Lutheran or Reformed, which?

A. I Always took it to be a Lutheran church.

Q. Did you ever hear the old members and others of that church

talk about the property on the corner of 22d and G sts. as
161 to its ownership? If yea, tell us in your own way what you heard them say.

A. When I first came here there was but one German church, and I joined it without asking what kind of a church it was as to its denomination. I had a neighbor living alongside of me called Neitz. We had conversations about that church; he belonged to it at the same time, and in that conversation Neitz told me that he was one of the first members of that church; that he helped to work upon it. He stated that at the time they built that church there was but a few Germans here; that they would build on a lot, and did build, what had been given by a man named Funk by will; that Funk had given by will two lots to the Germans—one for the Lutheran Church and one for the Reformed Church—to build upon, and they did build on the lot that had been given for the Lutheran Church. And
162 after that they formed a mixed congregation, Lutheran, Reformed, and Catholics. I heard it from elders and trustees and other members of the church on the corner of 20th and G sts. that at any time these Reformed members who joined that congregation went to that congregation at any time they chose to separate from the congregation at 20th st. that they could go and build on their own lot, 22d and G sts. I never heard any one deny that they could not build on their own lot there, 22d and G sts. I heard old Mr. Stock—I think he was secretary—say, and also old Mr. Eckloff and cabinet-maker Kaiser; Kaiser was a member of the consistory, I think. They said that the Reformed could build at any time on the corner of 22d & G sts.; that there could be no opposition to it, and we did try to build upon it once; that was in 1867; but we reconsidered it.

(Here Mr. Garnett objects to all this statement under the last question as irrelevant and immaterial.)

Witness, resuming, says: We thought it wouldn't answer so
163 well to have two German churches so close together. Then we turned around and bought a church on the corner of 6th and N sts. n. w.

Q. About what was the date when you heard the conversation you have mentioned in your last answer, that is, along about what year?

A. From about 1843 up to about 1854, except what I learned from Stock, that was about 1860

(Question and answer both objected.)

Q. Did you ever know Doctor Zachariah, a Reformed minister from Frederick, Maryland?

A. I did. He came here as a committee appointed from the Reformed Maryland classes to look over this property corner 22nd and G streets, what belong to the Reformed, and the clerk of the recording office in Annapolis, Md., told me that Dr. Zachariah had written him also in regard to the title to that property.

(The witness being here seen looking over a book while
164 making this as well as previous answers, Mr. Garnett objects to his further using the book—which is apparently a memorandum book—until a proper foundation is laid for the witness so using it.

Counsel for def'ts August Seivers et al. proposes to inquire of the witness what the book in question is and what are the reasons for the witness so using it.)

Q. Will you please state what the book is you have here and your reasons for using it, and have you any objections to its being seen?

A. The book has been my business book. My reasons for using it are because I have got a couple notes there to see the time of year, that is all. At the same time the book shows when the 6th street church was bought, also the 4½ street.

Q. What year, if you know, was it that Dr. Zachariah came on to look after that property on 2nd and G streets?

165 A. I think it was about 1858 or 1859, and again in 1869.

Q. Do you know whether or not the church on 6th and N sts., in this city, known as the First Reformed, is in point of fact the first Reformed church ever organized in this city?

(Question objected to, also the use of the book, which the witness looks at.)

A. I do; that was the first Reformed church organized, except we had a kind of Reformed congregation on 4½ st.; the Lutherans broke the church open and stole it from us.

(The latter part objected to as immaterial, irresponsive to any question, and as scandalous and impertinent.)

Witness resuming, says:

And; after they had taken the church away by force, they made a Lutheran church out of it.

(Same objection.)

Q. Do you know the names of the ministers who have offi-
166 ciated in the church corner 20th and G sts. since you have been in this city; and if yea, what denomination have they been and are, whether Lutheran or Reformed?

A. The first one was, I think, was Mr. Bivan, Mr. Finckler, Mr. Rietz; I don't know the present minister; I considered the church Lutheran and the congregation mixed; the ministers I consider Lutheran.

Q. Do you know whether that church on the corner of 20th & G has any synonical connection—that is, does it belong to any synod?

A. I always heard that the members did not belong to any synod.

Q. Do you know what catechism was used in the church 20th & G sts. when you were a member of it?

(Objected to, unless the witness was a member of the infant class.)

A. The Lutheran catechism—that is, what is called the
167 "Augsburg confession."

Q. Look at the catechism now shown you, and see if that

is the kind used in that church when you were a member of it, and whether it contained the articles of faith in that church?

A. I want to say when the children get confirmed in the Augsburg confession are Lutheran; they can't be anything else.

Exh. J. A. C., No. 4, contains the Augsburg confession.

Q. Were you ever present in that church when children were confirmed; if yes, are you able to say what confession of faith was used at such confirmation?

A. I was; the Augsburg confession was used.

X-exam'd by Mr. GARNETT:

Q. You state the book you were looking at was your business book; can you write?

168 A. I did not state that; I stated it had been my business book. I can write.

Q. How long have you been able to write?

A. I learned it while at school, between the years 6 and 14.

Q. You state you joined the Concordia Church in 1843; what denomination did you belong to at that time?

A. I never stated that I joined the Concordia. I did state that I joined the congregation, which was made up of different kind of denominations. I was christened and confirmed as a member of the Reformed Church. On that I was taken up as a member of the Reformed Church.

Q. Have you ever been anything else except a member of the Reformed Church?

A. As I have stated before, I joined the church corner of 20th & G sts. before I inquired what kind of a church it was. It was the only German church here.

169 Q. Are you in the habit of joining churches first, then inquiring afterwards what kind they are?

A. I do not.

Q. When did you leave this Concordia Church?

A. I think I left that congregation on 20th & G sts. about 1856 or 1857.

Q. Did you leave of your own free will, or did they expel you?

A. I left of my own free will. I never saw anybody put me out.

Q. Did you leave in consequence of any difficulty?

A. I don't think I ever had any difficulty with any member of that church.

Q. What church do you belong to now?

A. I have not joined any since I was confirmed. I was then taken into the Reformed Church, where I expect to live and die.

170 I consider a church and congregation different.

Q. What congregation do you form a part of now?

A. None.

Q. Do you attend any church?

A. I do when I feel like it.

Q. When you said we thought about building on this lot, 22nd & G sts., in 1857, who did you mean by "we"?

A. Reformed.

Q. Do you belong to the Reformed now; if so, which one?

A. I have answered that question before. I don't belong to any congregation.

Q. If you don't belong to any congregation, how could you say "we" were going to build a church?

A. I belonged to one at that time.

Adj'd to April 20th, '80, at 2 p. m.

171 Apr. 20, '80. Met pursuant to adjournment. Present: Counsel upon both sides.

Whereupon the cross-examination of witness Kehl was resumed by Mr. GARNETT:

Q. When did you join the first Reformed Church organized in this city?

A. I wish to know first whether that means the church corner of 6th and N sts.

Q. Did you ever join a Reformed congregation in this city?

A. I did

Q. When?

A. I expect it was in 1856 or in 1857.

Q. You state that the preachers of this church called Concordia you considered to be Lutheran. Do you know whether they belonged to any synod?

A. I have always been told that they don't belong to any.

172 Q. You haven't been to that church for 23 years, have you?

A. Have been in that church very often, sir. The last time I was in that church was last Easter a year.

Q. You haven't belonged to it since 1857, have you?

A. I haven't considered myself a member of that church since 1856 or 1857.

Q. What do you mean by coming here and trying to swear about the government of a church of which you haven't been a member for 23 years?

A. I didn't come here on my own hook. I was summoned here, and I have only made statements according to my known knowledge.

Q. Do you call knowledge that which people tell you in ordinary conversation?

A. I call knowledge what I know myself.

173 Q. Then you don't call that knowledge which you have testified to was told you in ordinary conversation, do you?

A. I have testified exactly as I have made a statement. I have testified of my own knowledge and what other persons have made statements to me.

Q. Where is this church situated of which Mr. Ebbenhause is preacher?

A. Corner of 6th and N. sts. n. w.

Q. Do you attend that church?

A. I wish to know what is meant by attending church.

Question repeated.

A. I don't know what is meant by that. I understand "attendance" means sweeping or opening the church.

Q. Were you consulted about bringing this suit?

A. Never.

Q. Have you a family?

174 A. I have a wife and myself. I reckon that is what is called a family.

Q. What church do you and your wife go to?

A. I go to any church that suits me, & I don't ask my wife. She goes to the church that suits her.

Q. Are you a very strict member of the Reformed Church?

A. I don't know what you call a strict member.

Q. You say you were brought here. Did anybody serve a subpœna on you to come here?

A. I have a note in my hand here from Col. Dye, delivered to me through the post, dated Washington, Apr. 1st, 1880, requesting me to call at his office on business of importance, and I saw Col. Dye at his office, and he told me that he wanted me as a witness in this case, and afterwards he informed me to be here at Friday at 2 o'clock. That is all the summons I ever got.

175 Q. Then you came here of your own free will and accord, it seems. Did you?

A. I did not, sir; I came here according to the attorney's request.

Q. Then there was no order of the court compelling you to come, was there?

A. I don't know anything further than the statement I have made.

Q. Did you have any talk with Ebbinghause about this case, either before or after it was brought?

A. I had talk with a great many people about this property in dispute.

Question repeated.

A. I had a right smart of talk with Ebbinghause about that property and a great many Reformed members of that church in 1866 or 1867.

Q. Did you have any talk with him about this property

176 after the suit was brought?

A. I don't know when the suit has been brought.

Q. When was the last time you had a talk with him about it?

A. I couldn't recollect, sir.

Q. Was it as much as a year ago?

A. It might be more and it might be less.

Q. Was it much as six months ago?

A. Couldn't recollect.

Q. Do you mean to say that you don't recollect that you and Ebbinghause and other members of that Reformed church corner of N & 6th sts. have frequently in the last two years talked over how you could get this lot away from the Concordia Church?

A. No, sir

Q. Do you swear that you have not done so?

177 A. I have been sworn to tell the truth in this case, and have told it as far as my recollection goes.

Question repeated.

A. I don't swear any more; I have been sworn as a witness to tell what I know in the case, and I have done it to the best of my knowledge.

Q. How is it that you can recollect so well what happened over thirty years ago, and can't recollect what happened within the last two years?

A. What I stated happened over 30 years ago; I ought to know that; the time I came here to Washington, and I generally keep a record about such little things in carrying on my own business.

Q. How does it come that you can recollect what happened in 1866 and 1867 and can't recollect what happened within the last two years?

A. I generally keep a little book notice, where I mark particular cases in, especially church cases.

178 Q. Then, what you testified to is from your books, and not from your knowledge; is that so?

A. No, sir; I did look at some books or papers over in my own writing before I came here on the witness stand; that puts me in the direction of my memory of the year.

Q. Who told you what you were going to be asked about when you came here?

A. Nobody.

Q. Then how did you know what to look at?

A. I am always prepared about that, so I would be able to tell all I knew about the matter, whether I was asked about it or not.

Q. When anybody asks you to testify, do you look up all your books and read everything that you ever wrote, in order to be able to testify about everything that might be asked you?

A. I don't recollect being asked to testify in cases, so I
179 would have no occasion to look up all my books. In this case I had time enough to look them up, as Col. Dye notified me on the 1st of April.

Q. Did you look at anything else in your books except what referred to this church and this lot?

A. There is nothing at all in that book about that church or lot.

Q. Then you didn't learn anything out of that book about the church or lot, which you say you looked at?

A. I could't learn anything about it when there was nothing in it about the church or lot.

Q. Where did you go to church last Sunday?

A. That is private business—my own business.

Q. Didn't you go to this church on corner 6th and N sts.?

A. I haven't been there last Sunday, and haven't been there for several years.

180 Q. When was the last time you ever had a talk with the trustees about this church?

A. I don't know who the trustees are, sir.

Q. Do you know August Sievers?

A. I know two Sievers, but don't know whether either one is named August, nor do I know whether either of them is trustee of this church.

Q. Do you know Edward Kolb?

A. Yes.

Q. Do you know Ludwig Freund?

A. Yes.

Q. Did you ever have any talk with either of the Sievers, Edward Kolb or Freund about this case, or about this lot?

A. Not to my recollection. I talked with some of them about the lot, some years back. I don't know this case.

The witness desires here to correct his answer. "I have
181 always been told that they don't belong to any" by adding thereto, the following: I know that one of the preachers, Mr. Finckler, belonged to the Lutheran classes, who has been minister of that church for about 20 years. The church does not belong to any synod, so I have been told. I have seen myself Mr. Finckler at the Lutheran classes.

Re-direct:

Q. Do you know whether any other of the ministers you have named besides Mr. Finckler belong to the Lutheran classes?

A. I do not know.

JOHN V. KEHL.

Sworn to and subscribed before me this 20th day of April, A. D. 1880.

JNO. A. CLARKE,
Examiner.

182 CHARLES WALTER, a witness of lawful age, produced on behalf of defendants August Sievers et al., being sworn, says:

Examined by Col. DYE:

I am fifty-six years old; I am an attorney at law.

Q. Have you ever had in your possession the old original book of records of the proceedings of the vestry of the church cor. 20th and

G; if yea, can you give us the substance of a resolution in relation to the lot which is the subject of this controversy?

(Objected to on the ground that the witness is now and has been of counsel for def'ts Killian et al. in this cause, and the question is improper.)

A. I decline to answer, for the reason that I shall not disclose any secrets between myself and clients.

Q. I don't ask for any information that came to you after you became counsel in this case. Did you not have such book in
183 your possession previous to the time of your being employed in this case?

A. No sir.

Q. Didn't you ever see or know of its existence before the time of your employment in the case?

(Mr. Garnett here requests the examiner to note upon the record that Judge Cuppy, of counsel for complainant, who is in attendance at this session, has been frequently whispered to by Col. Dye before the questions were put to the witness, and Mr. Garnett objects to the question as being immaterial and inadmissible.)

A. I think I saw the books in possession of the congregation, about 28 or 30 years ago, when I was the organist at that church, and that was generally the case when they paid me my salary, which was every three months.

Q. Do you know the substance of a resolution passed by
184 the vestry of that church between '57 and 1874, in relation to the lot in controversy, and didn't the knowledge of it come to you before you were employed as counsel in this case?

A. No, sir. Only what I heard from the members of the church.

CHARLES WALTER.

Sworn to and subscribed before me this 20th day of April, A. D. 1880.

JNO. A. CLARKE,
Examiner.

Adj'd to 23rd April, '80, at 2 p. m.

APRIL 23rd, '80.

Met pursuant to adjournment. Present: counsel on both sides; whereupon, by consent of counsel, adjourned subject to notice.

JNO. A. CLARKE,
Examiner.

185 APRIL 28TH, '80, 2 o'clock p. m.

Met pursuant to notice. Present: Col. Dye, for def'ts Sievers et al., and Mr. Garnett, for def'ts Killian et al.

Whereupon JOHN V. KEHL, a witness heretofore examined in this cause, was recalled on behalf of def'ts Sievers et al. and duly sworn.

Exam'd by Col. DYE:

Q. You have already testified in this case?

A. Yes, sir.

Q. You spoke of a Reformed Church on 4½ st. that was taken possession of by the Lutherans. State, if you know, where the minister and the members of that church went after the Reformed Church was closed on 4½ st.?

A. The minister and some of the members who left that church started a new congregation, and about two months after bought that church corner of 6th and N sts. as a Reformed Church, and
186 has been used as such ever since as far as I know.

Q. State, if you know, whether there was any other Reformed Church in this city when the property was bought on the corner of 6th and N sts., as you have stated?

(Mr. Garnett's attention being otherwise engaged during the examination up to this point, on hearing the questions read, interposes an objection to all the questions and answers as immaterial and irrelevant.)

A. There was none.

Q. Do you remember when the trustees of the church on the corner of 20th and G had an ejectment suit against George Hoffman for the possession of the property corner of 22d and G?

A. I do; I was present when the case was to be tried at Squire Mills' office.

Q. Will you state whether or not any of the trustees of that church corner of 20th and G sts. told you the substance of a resolu-
187 tion, which had been passed by their vestry, touching the ownership of the lot on the corner of 22d and G; if yes, state what was told you, and when?

(Objected to as immaterial, irrelevant, and inadmissible.)

A. Well, at the same time this case was to be tried there was a great deal of talk about this property in question, corner of 22d & G. Among the trustees of that 20th-&-G-st. church and the trustees of the First Reformed Church, on 6th and N sts., Charles Chroth, who represented himself as trustee; Ludwig Freund, and one Soahl, all three represented themselves as trustees of the Reformed Church at that time. I think Charles Schneider stated at that time—who represented himself as an officer and secretary of the church on the corner of 20th & G sts.—that the Reformed could not have any claim on that property corner of 22d and G not now any more, on account that they had not come up to the resolution that the church had passed some time *years* back. That was to be, if the Reformed did not claim the property that was specified in the resolution,
188 within ten years' time they had forfeited the property in question.

(Answer objected to as hearsay, irrelevant, and immaterial.

Q. Did Charles Schneider represent to the persons you have named in your presence that the resolution you have named was recorded

among the records of the proceedings in said church corner of 20th and G?

(Same objection.)

A. He did.

Q. Are you still a member of the church or congregation corner of 6th & N streets?

A. I was a member of that church when it started, but left it about 1871 with the minister and the majority of the congregation to avoid a law suit, and I haven't been a member of the congregation since.

X-exam'd by Mr. GARNETT:

189 Q. In this suit you speak of to get Hoffman out of possession, which the trustees of Concordia Church brought against him, did Hoffman appeal from the decision of the justice?

A. He did not. He only stated that the property had belonged to other parties—the Reformed parties—and Squire Mills sent the case to court and required Hoffmann to give bond in $200.

Q. Did you go on his bond?

(Objected to as immaterial, and as not responsive to the examination-in-chief.)

A. Three of the trustees of the 1st Reformed Church offered to go on the bond, but they wanted me on account of being an outsider—belonging to neither church in question—to receive the rent and to be paid to the winning party, and I was then induced to go on the bond, which I did.

JOHN V. KEHL.

Sworn to and subscribed before me this 28th day of April, A. D. 1880.

JOHN A. CLARKE,
Examiner.

190 EDWARD C. ECKLOFF, a witness of lawful age, produced on behalf of def'ts Sievers et al., being sworn, says:

Exam'd by Col. DYE:

I reside at 429 I st. N. W. I was 57 years old on the 15th of January last, and have lived here all my life, having been born here. I was a member of the church on the corner of 20th and G, and was a member of it when the congregation held their meetings in the City Hall. I remember when the church corner of 20th & G sts. was built, which has been about 42 or 43 years ago. The circumstance which impresses me with the time of the building of that church is that I carried the box with the jewels in it at the laying of the corner-stone. I remember the names of the trustees of that church at the time the church was built—Mr. Christian Eckloff, (my father,) Mr. Stringer, and Andrew Noer. That was the first German church built here. The denomination was comprised of vari-

ous denominations, and including all German-speaking peo-
191 ple. I was confirmed in that church. I think I would know the kind of catechism that was used, but not to swear to it. Let me see the book, and I may be able to tell it.

(The witness is here shown Exhibit J. A. C. No. 4, and resuming, says:)

I believe this is the book, excepting it has been extended—additions having been made to it. I recognize in that book the same confession the preachers use—the congregation confessed to their God directly. The confession in that book is known as the Augsburg confession. This confession is Lutheran, and all the preachers there, except one, were Lutherans. Different denominations at different times left that church and built churches of their own. The Catholics built their church first, here on 5th street. The next was American Lutherans, who built corner of 11th & H sts. The German Lutherans—a portion of them who became dissatisfied with their preacher, and for other reasons—built on the corner of 4th & E sts. N. W. My information on the subject of how they came
192 possessed of the lot on *on* which the church was built was from the trustees. The trustees met nearly every night in my father's store in regard to building the church—the plans and specifications. I heard them speak repeatedly that the property was left by Peter Funk on the 20th & G to build a German church for the purposes of the Germans of the city worshipping in the German language—to comprise all denominations—to worship according to their own dictation. I know the lot on the corner of 22d and G—the subject-matter of this controversy. They said that the lot on corner of 22nd & G st., as I understood them, when the Germans were strong enough to build a church of the Presbyterian or the Reformed faith, they were to build a church on that lot; that that lot was for them.

(Mr. Garnett here objects to all testimony of the witness as to what he has heard, unless the will or papers relating to it are produced, or their absence accounted for.)

Q. Do you know why the church on the corner of 20th &
193 G took charge of the lot on the corner of 22d & G; what do you know about it?

A. I know the trustees of the church took charge of it, on account of dirt and filth being thrown on it—it being then an open lot—and they fenced it in. I think about 1841 or '2 they leased it to a colored man for gardening purposes, for the rent of $5 per annum and taxes paid. I collected the rent frequently myself.

Q. Did the trustees claim to own the lot?

(Objected to.)

A. I cannot say, without it was in regard to holding it for the sake of their German brethren.

Q. Did you ever hear the trustees express themselves as anxious for those of the Reformed faith to build upon the lot 22d and G—and that the reason that they had taken charge of it was to prevent

improper persons from squatting upon it—that is, setting up title by prescription?

194 (Objected to as immaterial and inadmissible, and also as leading.)

A. I can't go as broad as that, sir.

Q. State what you have heard them say upon the subject of the last question.

(Same objection.)

A. I heard them speak, previous to fencing it in, that they wished that there were Germans enough here to support the two churches. That is about the idea I received from their conversations.

Q. Did you ever hear the trustees of the church corner of 20th & G assert they were the owners of the lot on 22d and G, while you were a member of that congregation?

(Same objection.)

A. I never heard them assert that they own it. I am speaking of the original trustees, now deceased.

195 Q. When did you cease to be a member of the congregation of that church, corner 20th and G?

A. I am not certain, I think it was in 1860. My reason for it being that my children were growing up and the distance to Sabbath school was too great—and I sent them to Dr. Dormer's church, nearer to their home.

Q. Do you remember in what year your father died?

A. I think it was in 1864.

Q. Was he a member of the consistory of that church when he died?

A. No, sir. His mind was enfeebled from an injury he received.

Q. Do you know in what year he ceased to be a member of the consistory?

A. Years before his death; I think about 1840.

X-exam'd by Mr. GARNETT:

196 I consider myself a member of that church still, although I don't attend it regularly—my father and mother were members of the Concordia Church up to the time of their deaths. My father had attended the Presbyterian Church. He was raised a Lutheran, and I consider myself a Lutheran, because I believe in that faith; was confirmed in that church. I consider my father was a Lutheran.

E. C. ECKLOFF.

Sworn and subscribed before me this 28th day of April, A. D. 1880.

JNO. A. CLARKE, *Examiner.*

CHARLES SCHROTH, a witness of lawful age, produced on behalf of def'ts Sievers *et al.*, being sworn, says:

Exam'd by Col. DYE:

I live on 6th st., between D st. & Pennsylvania ave. s. e. I am

about 46 years old. I remember the suit of the trustees of the 20th and G st. church against Hoffman, before Squire Mills, about
197 three or four years ago, for the possession of the property corner 22d and G. I was in it.

Q. Do you remember Charles Schneider telling you the substance of a resolution passed by the vestry of the church 20th and G, in relation to the property on the corner of 22d and G? If yea, state the substance.

(Objected to as inadmissible and irrelevant.)

A. Yes, sir; he told me that there was a resolution passed in the church between the Reformed and Lutheran members, if in 10 years the Reformed members of the church were able to build a church on the corner of 22d and G sts., then it was to belong to them, and if they didn't the lot was to go back to the Lutheran church. The Reformers were to pay all the expenses due on the lot. This resolution was put down in their book of the proceedings.

(Answer objected to for same reasons.)

198 Q. Did you understand him that this resolution was passed by the members of the vestry in that church—that is the Lutherans and Reformers in that church?

A. Yes, sir.

(Question and answer objected to.)

X-examined by Mr. GARNETT:

(Saving all objection to the admissibility of witness' testimony in regard to what Schneider said.)

Q. Didn't Mr. Schneider tell you that the ten years referred to in the resolution had run out at that time?

A. He did.

Q. Did not Mr. Hoffmann deed the house on that lot to you, Mr. Kehl and others?

(Objected to as not responsive to examination-in-chief.)

A. I can't remember. There was a settlement had. I
199 can't remember whether Hoffmann gave a deed or not. If he did it must be on record.

CHARLES SCHROTT.

Subscribed and sworn to before me this 28th day of April, A. D. 1880.

JNO. A. CLARKE, *Examiner.*

Adj'd subject to further notice of counsel.

May 7th, '80. Met pursuant to notice—present, counsel for defendants Seivers *et al.* and for defendants Killian *et al.*

Whereupon THOMAS BIGGINS, a witness of lawful age, produced on behalf of defendants Seivers *et al.*, being sworn, says:

Exam'd by Col. DYE:

I reside in this city, corner of 22d and F sts. I know lot 9, in square 80, corner of 22d and G sts. I am renting that property and

rent it from the trustees of the Concordia Evangelical Church,
200 corner 20th and G sts. I pay $15 a month for it, and have been renting it at that rate, it will be four years next July.

Mr. Garnett here objects to the entire deposition as being immaterial and irrelevant, and waives x-examination.

his
THOMAS + BIGGINS.
mark.

Sworn to and subscribed before me this 7th day of May, A. D. 1880.

JNO. A. CLARKE.
Examiner.

JOHN W. EBBINGHAUSE, a witness of lawful age, produced on behalf of defendants Sievers *et al.*, being sworn, says:

Exam'd by Col. DYE:

I am a minister, and reside at 606 "N" st. N. W. I know the property in dispute; I am the trustee of this property, and successor of D. Reintzel, who was the trustee of the same property. After I was appointed trustee by the court I took steps to recover pos-
201 session of the property.

Q. What did you do in that connection?

A. I went on the property and went into the houses and notified each of the occupants that they should pay henceforth rent to no one except myself. I also posted this notice on the door of one of the buildings, (the witness here hands the examiner a paper writing, and files the same, which is marked Exh. J. W. E., No 1.,) and served a copy of the same notice on the trustees, Killian *et al.*

Exh. J. W. E., No. 1.

Notice to Quit!

T. J. KILLIAN et al.,
Trustees of the German Evangelical Lutheran Concordia Church.

GENTLEMEN: As I desire to have possession of the house No. 619 22d st. N. W., and the other buildings connected therewith, and of all the buildings on the premises, to wit, lot No. nine (9) in square No. eighty (80) in the city of Washington, D. C., which said lot, with the buildings thereon, you now hold and occupy by your ser-
202 vants and tenants and unlawfully detain from me, you are hereby notified to vacate said house and buildings, and to surrender and deliver up possession of all of said premises to me after the expiration of (30) days after the service of this notice.

Very respectfully,

J. W. EBBINGHAUS,
Trustee.

Q. You are the pastor of the church corner of 6th and N sts., are you not?

A. I am.

Q. What are the distinctive sectarian features of that church or society?

A. That church is Reformed or Calvinistic or German Calvinists, known under that name.

Q. Has that church a synonical connection through the Maryland classes?

A. It has; subject to the order of the general synod.

Q. What catechism is used in that church & society?

203 A. The Heidleburg catechism.

Q. Will you look at this book and say whether or not the same is used in that church and society?

A. This book is the standard authority and doctrine in that church and is used therein.

(The book is here offered in evidence, marked "Exh. J. W. E., No. 2.")

Cross-examined by Mr. GARNETT:

Q. The bill in this case, Mr. Ebbinghaus, appears to be filed the same day you were appointed trustee. Was it not prepared before you were so appointed as trustee, and at the same time with a petition that you should be appointed trustee?

A. In the first place I don't know whether it was filed the same day I received my appointment as trustee, and in the second place I don't know that it would be prudent to file a petition or bill

204 while the appointment was still in the hands of the justice having the appointment. I don't know that it was filed the same day.

Q. Was this bill prepared at your request?

A. Yes, sir.

Q. How long before you swore to this bill was it that you requested it to be prepared?

A. I don't know.

Q. By whom was the bill prepared?

A. By my attorney then—Col. Dye.

Q. Do you remember signing and swearing to it?

A. I do.

Q. About how long before that occurrence was it that you spoke to your attorney to prepare it?

A. I don't know. I can't tell for a certainty.

205 (Objected to as not responsive to the examination-in-chief.)

Q. At whose request was it that you signed and swore to this bill?

A. There was no particular request. My lawyer prepared the papers and I followed his directions.

Q. You requested him to prepare the papers, did you, and he notified you when they were ready for execution?

A. Yes.

Q. Can you tell about how long a time elapsed between the requesting of the preparation and the execution of the papers?

A. I don't know.

Q. Did you call upon your attorney more than once before the suit was brought in reference to bringing the suit?

A. I don't know whether once or twice. I called during
206 the pendency of another suit between Killian et al. against Hoffman.

Q. You were pastor of this Reformed Church when that suit was commenced, were you not, and it was as pastor of that church and party interested that you called?

A. I want to say that I was not pastor when that suit was commenced. The suit was commenced in July and I was made pastor of the church in November, 1876, and the suit was ended, I think, in July, 1877.

Q. The defendants August Sievers, Edward Kolb, and Ludwig Freund were the trustees of your church and petitioned to have you appointed trustee, did they not?

A. They were.

Q. Did they ask you whether you were willing to act before they made this petition?

A. There was an understanding between us that I should act.

207 Q. Was there any understanding that you should commence this suit?

A. Yes.

Q. You state that you served notice upon the occupants not to pay any rent to any one except you. Did you serve that notice before or after you brought that suit?

(Col. Dye here objects to all the foregoing questions, except the last one, as not being responsive to the examination-in-chief.)

Q. You consider that this lot, corner 22d & G, belongs to your church, do you?

A. Yes, sir; most emphatically.

J. W. EBBINHAUS.

Sworn to and subscribed before me this 7th day of May, A. D. 1880.

JOHN A. CLARKE,
Examiner.

208 Col. Dye here offers in evidence a paper writing, marked Exh. J. W. E., No. 3, being an order of John W. P. Myers on Connor & Hoffman, Mar. 27, 1866, for $12.50.

Exh. J. W. E., No. 3.

WASHINGTON CITY, D. C., *March 27th*, 1866.

Mess. CONNOR & HOFFMAN.

Please pay to the order of the trustees of the German Evangelical

Lutheran Church twelve dollars and fifty cents, and charge the same to account of rent due me.

$12.50 Yours, &c., JOHN W. P. MYERS.

Received the above amount of twelve dollars and fifty cents in full from George Hoffman.

JOHN JOACHIN,
Trustee.
JOHN SCHNEIDER,
Trustee.

209 *Decree dismissing bill, &c.*

In the Supreme Court of the district of Columbia, holding an Equity Court.

JOHN W. EBBINGHAUSE
vs.
JOHN GEORGE KILLIAN, JOHN SCHENCK, JOHN SCHNEIDER, trustees, and AUGUST SIEVERS, EDWARD KOLB, LUDWIG FREUND. } Equity. No. 5688.

This cause came on regularly to be heard upon the bill and amended bill of the complainant, the answers of the defendants, the testimony, and other papers read in the cause, and was argued by counsel; upon consideration whereof it is adjudged, ordered, and decreed, on this 23d day of September, A. D. 1880, that the bill of complaint be, and the same is hereby, dismissed without prejudice, and that the defendants have their costs to be taxed by the clerk and have execution therefor.

W. S. COX, *J.*

210 *Order for Appeal to General Term.*

JOHN W. EBBINGHAUS
vs.
KILLIAN et al., trustees, &c. } 5688. Equity Doc. 17.

The clerk will please enter an appeal from the order of the court in this cause made on the 23d day of Sept., 1880.

P. E. DYE,
Solicitor for Complainant.

Appeal as ordered entered.
Sept. 24, 1880. BY THE CLERK.

211 *Decree of General Term, &c.*

In the Supreme Court of the district of Columbia sitting in general term.

JOHN W. EBBINGHAUS
vs.
JOHN G. KILLIAN, JOHN SCHENCK and JOHN SCHNEIDER, trustees of the German Evangelical Concordia Church, and AUGUST SIEVERS, EDWARD KOLB and LUDWIG FREUND, trustees First Reformed Church. } Eq. No. 5688, Doc. 17.

This case came on to be heard at this term on the bill and answers and upon the evidence and was argued by counsel, and thereupon, upon consideration thereof, it is by the court this 23d day of February, 1881, ordered, adjudged and decreed that the decree made in this cause in the court below dismissing the bill without prejudice be and the same is hereby reversed.

212 And this court being of the opinion that the said John W. Ebbinghaus, as trustee under the appointment of this court, is entitled to have and possess the said lot No. nine (9) in sq. eighty (80) for and on behalf of the trustees of the First Reformed Church of the city of Washington, D. C., and that the said Ebbinghaus, as such trusteee, is entitled to have an account of the rents and profits which have been received from said lot No. nine (9) in sq. No. eighty (80) by the trustees or other authorities having charge of lot No. five (5) in sq. No. one hundred and twenty-one (121), and of the Concordia Church building thereon, whether received by said trustees or authorities under the name of the trustees of the German Evangelical Concordia Church, or as to the trustees of the German Lutheran Evangelical Concordia Church, and that the said trustees or church authorities of the said Concordia Church should be

213 enjoined from further interference with the said lot No. nine (9), sq. No. eighty (80).

It is therefore further adjudged, ordered, and decreed that the said John W. Ebbinghaus, as such trustee, is authorized and empowered to take possession of said lot number (9) nine, in square number (80) eighty, and hold the same as trustee for the First Reformed Church of the city of Washington, D. C., and receive the rents, issues, and profits thereof and account for the same as such trustee for the said First Reformed Church of the city of Washington, D. C.

And it is further adjudged, ordered, and decreed that the trustees or authorities of the said Concordia Church, whether under the name of the trustees of the German Evangelical Concordia Church or under the name of the trustees of the German Lutheran Evangelical Concordia Church, are hereby enjoined and strictly forbidden from interfering further with the said lot number (9) nine in square

number (80) eighty, or with the control or management
214 thereof, or with the receipts of the rents and profits thereof by the said Ebbinghaus as such trustee.

And it is further adjudged, ordered, and decreed that the said trustees of the said Concordia Church, under either or both of the designations aforesaid, account in this court with the said Ebbinghaus as trustee, of and concerning the rents and profits received by them from the 17th July, 1877, from and out of the said lot number (9) nine in square number (80) eighty, and that the auditor proceed to take such account, and in accounting the said trustees shall be allowed by the auditor as a credit on the sum so ascertained to have been received since the 17th of July, 1877, the amount, if any, which they may show was due to them on that day for taxes they may have paid in excess of the receipts up to said day from said lot No. (9), square No. 80.

And it is further adjudged, ordered, and decreed that the costs of this suit shall be paid by the trustees, defendants, of the Con-
215 cordia Church and the trustees of the First Reformed Church equally.

A. B. HAGNER,
Asso. Justice.

Appeal to S. C. U. S.

And from this decree the defendants Killian, Schenck, and Schneider, trustees, &c., pray an appeal to the Supreme Court of the United States, and the same is allowed, and the court fixes the penalty of the appeal bond at one thousand dollars.

216 *Notice.*

In the Supreme Court of the district of Columbia, the —— day of ——, 188 —.

JOHN W. EBBINGHAUS
vs.
J. G. KILLIAN et al. and AUGUST SIEVERS et al. } No. 5688. Eq. Doc. 17.

Take notice that I shall on the 8th day of March, 1881, at 10 a. m., or so soon thereafter as I can be heard, offer for approval to the court the bond of the defendants John George Killian, John Walters, and Gustave Giesler, trustees of the German Evangelical Concordia Church, for the sum of one thousand dollars, the same being their bond on their appeal taken in this case to the Supreme Court of the United States, on which bond the following sureties will be offered:

Frederick Imhoff, address 1422 L st., N. W.
Charles Schneider, address 413 I st., N. W.
Louis Ketler, 1423 F st., N. W.
William Berger, 1400 14th st., N. W.
William Ockstardt, 720 C st., N. E.

HENRY WISE GARNETT,
Sol'r for J. G. Killian et al., Trustees.

To P. E. DYE and F. P. CUPPY,
Sol'rs for Compl't and August Seivers et al.

217 I hereby acknowledge service.

P. E. DYE,
Mar. 1, 1881. *Solicitor.*

Service of this notice acknowledged this 2d day of March, 1881.

CUPPY & INGERSOLL,
Of Counsel for Complainant.

218 *Supersedeas Bond of J. G. Killian et al., Trustees.*

In the Supreme Court of the district of Columbia the 8th day of March, 1881.

JOHN W. EBBINGHAUSE
vs.
J. G. KILLIAN et al. and AUGUST SIEVERS et al. } Equity. No. 5688. In error.

Know all men by these presents, that we, John George Killian, John Walter, and Gustave Giesler, trustees of the German Lutheran Evangelical Concordia Church, and John George Killian, John Walter, and Gustave Giesler, Charles Schneider, Frederick Imhoff, and William Berger are bound unto the above-named John W. Ebbinghaus, trustee, the complainant, and his successors, in the sum of two thousand dollars lawful money of the United States, to be paid to the said John W. Ebbinghaus, trustee, and his successors in office. To which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents. Sealed with our seals and dated this 8th day of March, 1881.

219 Whereas the above-named John George Killian, John Walter, sr., and Gustave Giesler, trustees of the German Lutheran Evangelical Concordia Church, have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said Supreme Court of the district of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named John George Killian, John Walter, and Gustave Giesler, trustees of the German Lutheran Evangelical Concordia Church, shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

J. G. KILLIAN, [SEAL.]
JOHN WALTER, SR., [SEAL.]
GUSTAVE GIESLER, [SEAL.]
Trustees of the German Lutheran Evangelical Concordia Church.

J. G. KILLIAN [SEAL.]
JOHN WALTER, SR. [SEAL.]
GUSTAVE GIESLER. [SEAL.]
CHAS. SCHNEIDER. [SEAL.]
FRED. IMHOFF. [SEAL.]
WILLIAM BERGER. [SEAL.]

Sealed and delivered in presence of —
HENRY WISE GARNETT.

Approved by the court March 8th, 1881.

D. K. CARTTER,
Ch'f Justice.

(Endorsement on cover:) Dist. of Col. Supreme Court; No. 236. John G. Killian et al., trustees of the German Lutheran Evangelical Concordia Church, appellants, *vs.* John W. Ebbinghaus, trustee. Filed 9th April, 1881. 220 pages.

110-562

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 236.

JOHN G. KILLIAN ET AL.

vs.

JOHN W. EBBINGHAUS, TRUSTEE.

BRIEF FOR APPELLANTS.

HENRY WISE GARNETT,
CONWAY ROBINSON, JR.,
Solicitors for John G. Killian et al., Trustees of Concordia Church.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 236.

JOHN G. KILLIAN ET AL.

vs.

JOHN W. EBBINGHAUS, TRUSTEE.

BRIEF FOR APPELLANTS.

STATEMENT OF FACTS.

This is a suit in ejectment brought by parties out of possession of the real estate involved in the cause, and who never were in possession, against the parties who were at the time in open adverse possession, and had been in such adverse possession for more than thirty years, the proceeding to accomplish the end desired being a bill of interpleader filed in equity by one of the parties seeking the possession, against his co-claimants and those in adverse possession.

The facts in the case are as follows:

In 1833 the German-speaking population of the District of Columbia, being few, presented the rare spectacle of a species of theological happy family by all worshipping together as one congregation, although individually representing several different beliefs or churches, the united congregation having among its members Lutherans, Calvinists, and a few Roman Catholics. (See Record, pp. 14, 72,

73.) During the year 1833 this congregation took possession of a vacant lot of ground at the corner of 20th and "G" streets northwest, in the city of Washington, and thereon erected a church building, which, as an evidence of the united character of their congregation, they named "The German Evangelical Concordia Church." (See R., pp. 14, 17, 21, 39.)

This congregation, composed principally of Lutherans and Calvinists, has in the same united form remained and is now in possession of this church and lot. (See R., pp. 16, 18, 21, 39, 41, 48, 54.)

That in or about the year 1840 this congregation took possession of the property at the corner of 22d and G streets, being lot 9, in square 80, and the property involved in this suit, which property was at the time vacant and unimproved, and proceeded to rent out said property, and have from that time retained open adverse posssession of the same, renting and leasing it to various tenants and paying general and special taxes thereon.

See Record—

As to possession, pp. 15, 17, 18, 20, 21, 43, 44, 48, 54, 57, 73.

As to fencing, pp. 43, 46, 56, 73.

As to leasing, pp. 15, 16, 20, 21, 43, 44, 49, 52, 54, 73, 75, 76.

As to receiving rent, pp. 21, 31, 49, 57, 60, 73, 76.

As to paying taxes, pp. 44, 48, 49, 51, 57.

For many years the German Evangelical Concordia Church remained the only German church in this District. In the course of time, however, a German Catholic church was built, and subsequently an effort was made in the Concordia Church to change it from the united form of Lutheran and Calvinist into a Lutheran church, and on the failure of this attempt a few of the Lutheran members withdrew, and a Lutheran church was built. Finally, in

1856 or 1857, the First Reformed or Calvinist Church was organized, whose pastor is the complainant in this suit, and whose trustees form one of the parties defendant.

This Reformed Church was organized and the edifice erected entirely outside and independently of the Concordia Church; nor does there appear to be any secession of the Calvinists in the Concordia Church to this new First Reformed, although one or two individuals who had belonged to the Concordia joined the new church.

The Concordia congregation remained as it was, and still is a mixed congregation of Lutherans and Calvinists. (R., pp. 39, 41, 42, 48, 54, 62.) The First Reformed, however, began to look with longing eyes on the property in dispute, being the lot on the corner of 22d and G streets, and in 1876 the officers of the First Reformed endeavored to obtain possession of the property by inducing the tenant of the Concordia Church, who was in possession, to attorn to them. (See R., pp. 60 and 61, testimony of George Hoffman.) The result of this was that the trustees of the Concordia Church evicted the tenant, and leased the property again.

During this process of eviction the complainant in this suit, John W. Ebbinghaus, had become the pastor of the First Reformed Church, and he with the trustees of the said church, assisted by their attorney, conceived and agreed that the trustees should file a petition to the supreme court of the District of Columbia, holding a special term in equity, under §§ 453 and 454, Revised Statutes for the District of Columbia, stating that this lot 9, in square 80, had been set apart by one Jacob Funk for the "German Calvinist Society," and held by one D. Reintzel, as trustee for said society; that the First Reformed was the successor of "the German Calvinist Society," and entitled to the lot; that D. Reintzel was dead, and pray the court to appoint the complainant as trustee in the place and stead of D. Reintzel.

And that as soon as a decree was obtained from the court so appointing the complainant, then it was further agreed that the complainant should file the bill of interpleader in this cause, for the purpose of in this manner obtaining possession of the property at the corner of 22d and G streets, being lot 9, in square 80. (See testimony of complainant, R., pp. 76, 77, and 78.)

In pursuance of this agreement, the trustees of the First Reformed Church, on July 16th, 1877, filed the petition making the above statements, which is to be found in Record on pp. 57, 58. On the same day, without any evidence to support the petition, or to show that there had ever been a Jacob Funk, a D. Reintzel, or a trust estate of any kind, the court passed the decree without notice to or any knowledge on the part of the parties in possession, or making them or the heirs of D. Reintzel parties.

And on the next day, July 17th, 1877, the bill in this cause, which had been previously prepared under the agreement, was filed. The complainant, after the decree on the petition, found on p. 57 of R., served on the tenants of the Concordia Church, who were in possession of the said lot 9, the notice found in Record, p. 76.

Law Points.

In no case can a bill of interpleader be sustained where the complainant is not in possession at the time the bill is filed.

It is insisted that the present suit is without precedent.

The complainant here comes into court, being out of possession, and asks that the person who claims a title adverse to his may interplead with one for whom complainant claims to be a trustee.

Martin *vs.* Mayberry, 1 Devereux (N. C. Eq.), p. 169.

A bill of interpleader only lies where two or more persons claim the same debt or duty from the complainant by different or separate interests.

Adams *vs.* Dixon, 19 Ga., 513.
Turnpike Co. *vs.* Ferree, 17 N. J. Eq., 117.
Hayes *vs.* Johnson, 4 Ala., 267.
Atkinson *vs.* Manks, 1 Cowen (N. Y.), 691.
Carrico *vs.* Tomlinson, 17 Mo., 499.

Such a bill cannot be filed against parties one of whom claims by a hostile, a superior title to the complainant.

Lund *vs.* Seaman's Bank, 37 Barb., 129.

A bill of interpleader cannot be filed collusively with either of the parties made defendant thereto.

Shaw *vs.* Coster, 8 Paige (N. Y.), 339.
Tobin *vs.* Wilson, 3 J. J. Marshall, 63.

Nor can the complainant to such a bill take part in the argument of the question in dispute.

Houghton *vs.* Kendall, 7 Allen, 72.
Story's Eq. Pleading, 297.

A bill in equity is not the proper means to recover the possession of land, there being no fraud in the case, nor other matter especially the subject of equitable cognizance, and a party cannot by any colorable suggestion use such a bill in place of the common-law remedy of ejectment.

The Court will look at the proofs, and if there be no proof at all of the matters which would make a proper case for equity it will disregard them, and look at the bill simply in its aspect of one to recover land of which the complainant is out of possession.

If the bill be clearly one of the sort above spoken of, it

is the duty of the Court *sua sponte*, and though there be no demurrer, plea, or answer setting it up to recognize the fact and give to it effect.

HENRY WISE GARNETT,
CONWAY ROBINSON, JR.,
Solicitors for John G. Killian et al.,
Trustees of Concordia Church.

110-568

Supreme Court of the United States

OCTOBER TERM, 1883.

No. 236.

JOHN G. KILLIAN et al., Trustees of the GERMAN LUTHERAN EVANGELICAL CHURCH,

vs.

JOHN W. E. EBBINGHAUS, Trustee.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEES.

Thomas McGill & Co., Law Printers, Washington, D. C.

Supreme Court of the United States.

October Term, 1883.—No. 236.

JOHN G. KILLIAN ET AL., TRUSTEES OF THE GERMAN LUTHERAN EVANGELICAL CHURCH,

vs.

JOHN W. E. EBBINGHAUS, TRUSTEE.

Appeal from the Supreme Court of the District of Columbia.

STATEMENT OF THE CASE.

The bill in this case, filed by John W. Ebbinghaus, charges that he is trustee in equity under the appointment of the Supreme Court of the District of Columbia, and, as such, is seized of a lot No. 9 in square 80, in the city of Washington, and holds the same as successor to a certain D. Reintzel, deceased, for the "German Calvinist Society," in accordance with the intent of a certain Jacob Funk, the original owner of the property, in trust for the use and benefit of the legal successors and beneficiaries of the said "Calvinist Society," whoever they may be; that he is ready to pay the rents, issues, and profits thereof when received by him, into court to be disposed of as it shall direct, and to perform all the duties of his office according to law; and that he institutes this suit with the view and purpose of procuring the settlement and determination, by the court, as to who are the legal beneficiaries under said trust. He further charges that certain John G. Killian and others, asserting themselves to be the

trustees of the German Evangelical Concordia Church, at the corner of 20th and G streets N. W., in Washington city, claim to be the legal beneficiaries of the said trust for religious purposes, and, as such, entitled to the rents, issues, and profits of the said lot No. 9; that said trustees have, from time to time, received large sums of money arising from such rents, issues, and profits, without the consent of the said Reintzel, or of the complainant as his successor, as trustee; and he charges they ought to account to the complainant, as trustee, for these rents, issues, and profits, and in the meantime pay them into court to abide the determination of the suit.

He further charges that a certain August Seivers and others, claiming to be trustees of the First Reformed Church of the city of Washington, D. C., also claim to be the legal successors of the "Calvinist Society," and, as such, to be the legal beneficiaries of the said trust, and entitled to receive the rents, issues, and profits, and the estate therein; and that the said Seivers and his co-trustees are expected to sue the complainant for the recovery of their supposed rights. He prays that an account may be taken of the rents so received by Killian and his co-trustees in behalf of the "German Evangelical Concordia Church;" that said trustees may be decreed to pay into the court whatever may be found due on account of said rents; that they and the said Seivers and his co-trustees, and all other persons may be enjoined from bringing suit against the complainant in respect of the said property, or interfering further with the same, until the decision of the court shall be known in the premises; and that the respective claimants so asserting themselves to be the beneficiaries of the trust may be required to interplead together in this suit; that all necessary accounts may be taken, and for further relief. Killian and his associates, as the trustees of the "German Evangelical Concordia Church," in their answer, deny the title of the complainant as trustee,

and claim the property in behalf of the church of which they are trustees. They deny their accountability for the rents and profits, except to the said Concordia Church, and insist that the right and title of the property is in them; and aver that possession of the same has been in the church of which they are trustees for over thirty years.

Seivers and others, as trustees of the First Reformed Church of the city of Washington, answer the bill, admitting in general its allegations; insisting that their church is the legitimate successor of the Calvinist Society, and claiming that they are the rightful beneficiaries under the trust set forth in the bill.

Points of Law Involved.

Appellee's claim—

1. Appellee claims that this proceeding was properly instituted in equity, because Chancery Courts have supervision and control of all incorporated societies and associations; and in this case, wherein there is shown a trust created for religious purposes, relief in chancery may appropriately be invoked.

2. This is especially true in this case, wherein by reason of the number of the parties and the nature of the rights in controversy, damages as assessed by a court of law cannot afford suitable or adequate redress.

Roshi's Appeal, 69 Penn., 462 to 471;
Gibson et al. v. Armstrong, and Armstrong v. Gibson et al., 7 B. Monroe, 481, 492, 496–7;
McGinnis v. Watson, 41 Penn., 1;
Sutter et al. v. The Trustees 1st Reformed Dutch Chu., 42 Penn., ;
Kisor's Appeal, 62 Penn., 428;
Harrison et al. v. Hoyle et al., 24 Ohio State, 254;
Gilbert v. Arnold, 30 Md., 38;
Beatty v. Kurtz, 2 Peters, 585.

3. That a bill in the nature of a bill of interpleader, such as herein filed, is an appropriate form of complaint in this case.

Story's Eq. Pl., sec. 279 *b*;
Story's Eq. Jurisprudence, sec. 817 *a* and *b*.

That where possession is relied upon to sustain a title to real estate, that possession must be shown to have been continuous for the full period of twenty-one years, and that such possession must, during all that time, have been actual, visible, adverse, notorious, exclusive, and unbroken.

Zeller's Lessee v. Jacob K. Eckert and others, 16 Curtis, 118, 120;
Whaley v. Whaley, 1 Spear, 225;
Richard v. Williams and others, 7 Wheaton;
Curtis, 221; 5 Md., 237;
2 Harrison & Johnson, 82;
Thitle et al. v. Fosburg Coal Co., 10 Md.;
Hill on Trustees, American ed., 407-8, note;
Smith's Leading Cases, American ed., Vol. 2, 597;
Williams et als. v. The First Presbyterian Society Cincinnati et als., 1 Ohio State, new series, 478.

Points of Fact.

The record shows:

1st. That the appellee in his bill alleges that the lot in controversy was donated, or given in trust, by Jacob Funk to D. Reintzell, as trustee, to hold for the use and benefit of the German Calvinist Society. (Rec., pp. 1, 2.) The appellants admit the donation and gift by Funk to Reintzell, but allege that it was a donation for the Calvinist Society, and not to the German Calvinist Society. (Rec., p. 3.)

That the descriptive designations "Calvinist Society" and "German Calvinist Society" mean one and the same Society. (Rec., pp. 29, 30, 31, 39, 41, 77.)

2d. That the First Reformed Church is the first organized German Calvinist Society in the city of Washington, and as such was intended by the donor to be the beneficiary under the donation made by Funk to D. Reintzell. (Rec., pp. 64, 77.)

That John W. Ebbinghaus was duly appointed trustee and successor of D. Reintzell, deceased, before the bill herein was filed, and has ever since his appointment acted as such trustee. (Rec., pp. 57, 58, 59.)

The conclusions of fact established by the whole testimony are:

a. That about the year 1832 the Germans residing in Washington having no religious association in which the services were conducted in the German language, joined in worshiping together at the same place, and that the services were conducted in their native language.

b. That in this association were Jews, Roman Catholics, Lutherans, and Calvinists.

c. That at first their numbers and means did not enable them to erect a church edifice, but that about the year 1833 they had so increased in numbers and wealth that by their combined contributions they felt themselves able to erect a church edifice of their own.

d. That about the year 1832 it was announced by some one at a meeting of this society that Jacob Funk had donated two lots in Washington for religious uses, one on the corner of G and 20th streets to "D. Reintzell for Lutheran congregation," and one on the corner of G and 22d streets to "D. Reintzell for Calvinist Society."

d. That this society, composed of the several denominations, by joint contribution erected a church edifice on the

lot dedicated and donated by Funk to "D. Reintzell for Lutheran congregation," and organized and continued to worship there under the name of the German Evangelical Concordia Church, pp. 14, 15, 16, 18, 19, 21, 39, 41, 42, 45, 53, 63, 65, 71, 73, 74.

These propositions, sustained as they are by the evidence referred to, clearly show that there never has been that kind of possession by the appellants which can sustain a title by prescription.

F. P. CUPPY,
P. E. DYE,
Solicitors for Appellees.

110-566

Supreme Court of the United States

October Term, 1883.

No. 236.

JOHN G. KILLIAN et al., Trustees of the GERMAN LUTHERAN EVANGELICAL CHURCH,

vs.

JOHN W. EBBINGHAUS, Trustee.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

OPINION OF THE COURT BELOW.

APPENDIX TO BRIEF FOR APPELLEES.

Thomas McGill & Co., Law Printers, Washington, D. C.

IN THE

Supreme Court of the District of Columbia,

SITTING IN GENERAL TERM.

In Equity. No. 5,688.

OPINION OF THE COURT BELOW.

JOHN W. EBBINGHAUS, TRUSTEE,

vs.

JOHN GEORGE KILLIAN ET AL.

Decided November 21, 1881. The Chief Justice and Associate Justices Wylie and Hagner sitting.

1. A bill in the nature of a bill of interpleader is not within the rule applicable to bills of interpleader strictly so called, viz., that they can only be maintained where the plaintiff claims no interest in the subject matter, for in many cases the former will lie by a party in interest to ascertain and establish his own rights where there are other complicating rights between third parties.
2. Courts of Chancery have supervision and control of all unincorporated societies or associations. With respect to them they have the power of prevention of acts contrary to law and prejudicial to the interests of the community, or to the rights of individuals, and can afford specific relief where a recovery in damages would be an inadequate remedy for the wrong.
3. So, where by reason of the numbers of the parties and the character of their rights, damages are unsuitable as a means of redress, equity will apply the required remedy.
4. In a controversy over a trust claimed to have been created for religious purposes, Chancery, which exercises jurisdiction in such cases on the ground of trust, must give effect to its provisions, if they be legal, and to that end must ascertain and determine its scope and object. In that investigation the court is authorized to

resort to the early history of the church as contained in standard and authentic works on the subject prior in date to the existence of the particular controversy.

5. Before a title to land by possession alone can be successfully maintained, the possession must be shown to cover the full period of twenty-one years, and that during all this time it has been actual, adverse, visible, notorious, exclusive and unbroken, with claim of title against all the world.

6. The statute of limitations has no application to express subsisting trusts. In such cases the trustee, while he holds possession, holds in behalf of the real *cestui qui trusts*, whoever they may be. He cannot, therefore, invoke adverse possession in favor of persons claiming as beneficiaries, if under the trust originally impressed upon the property they are not in fact the true beneficiaries.

7. Where the possession of a party is under and in privity with the estate of the person under whom such party claims, there can be no adverse possession against that person.

8. Where a trust has been created for the benefit of a particular class of persons, as, for example, "for the Calvinist Society," and there is nothing in the deed expressly declaring the particular nationality or location of the society to whom the advantages of the trust are to enure, the court will be governed by the circumstances surrounding the trust at its inception, and if there is sufficiently evinced an intention by the grantor to confine it to particular persons of a particular locality, the court will give effect to that intention and restrict the trust to those persons and to that locality most probably intended to be benefited.

9. In 1770 a trust for the benefit of an unincorporated religious body was created in lands situated in what now constitutes the District of Columbia. Subsequently, under the act of Maryland of 1791, ch. 45, making provision for the allotment and assignment of certain lots of ground to certain parties, "to hold the same in their former estate," two lots were conveyed to the trustee in lieu of the original trust property held by him. *Held*, That the conveyance made under the authority of this act was to be taken as a full legislative assent to the validity of the title of the trustee.

10. The statutes of mortmain (in force in Maryland, 1770.) applied only to corporations. Trusts made by feoffment grant or devise to unincorporated bodies for charitable uses and purposes, not deemed superstitious, were not invalid, and a trust for a religious purpose has long been declared a charitable purpose in this respect.

11. After a lapse of nearly a hundred years, during which time the validity of a trust had never been questioned, and all parties ever claiming the property had claimed under the trustee's title, the court will, under proper circumstances of possession, presume the existence of grants and the enactment of statutes necessary to confirm the trustee's title.

F. P. CUPPY, for the First Reformed Church.

H. W. GARNETT, for Concordia Church.

Mr. Justice HAGNER delivered the opinion of the court.

The bill in this case, filed by John W. Ebbinghaus, charges that he is trustee in equity under the appointment of the Supreme Court of the District of Columbia, and, as such, is seized of a lot No. 9 in square 80, in the city of Washington, and holds the same as successor to a certain D. Reintzel, deceased, for the "German Calvinist Society," in accordance with the intent of a certain Jacob Funk, the original owner of the property, in trust for the use and benefit of the legal successors and beneficiaries of the said "Calvinist Society," whoever they may be; that he is ready to pay the rents, issues, and profits thereof when received by him, into court to be disposed of as it shall direct, and to peform all the duties of his office according to law; and that he institutes this suit with the view and purpose of procuring the settlement and determination, by the court, as to who are the legal beneficiaries under said trust. He further charges that certain John G. Killian and others, asserting themselves to be the trustees of the German Evangelical Concordia Church, at the corner of 20th and G streets N. W., in Washington city, claim to be the legal beneficiaries of the said trust for religious purposes, and, as such, entitled to the rents, issues, and profits of the said lot No. 9; that said trustees have, from time to time, received large sums of money arising from such rents, issues, and profits, without the consent of the said Reintzel, or of the complainant as his successor, as trustee; and he charges they ought to account to the complainant, as trustee, for these rents, issues, and profits, and in the meantime pay them into court to abide the determination of the suit.

He further charges that a certain August Seivers, and others, claiming to be trustees of the First Reformed Church of the city of Washington, D. C., also claim to be the legal successors of the "Calvinist Society," and, as such, to be the legal beneficiaries of the said trust, and

entitled to receive the rents, issues, and profits, and the estate therein; and that the said Seivers and his co-trustees are expected to sue the complainant for the recovery of their supposed rights. He prays that an account may be taken of the rents so received by Killian and his co-trustees in behalf of the "German Evangelical Concordia Church;" that said trustees may be decreed to pay into the court whatever may be found due on account of said rents; that they and the said Seivers and his co-trustees, and all other persons may be enjoined from bringing suit against the complainant in respect of the said property, or interfering further with the same, until the decision of the court shall be known in the premises; and that the respective claimants so asserting themselves to be the beneficiaries of the trust may be required to interplead together in this suit; that all necessary accounts may be taken, and for further relief. Killian and his associates, as the trustees of the "German Evangelical Concordia Church," in their answer deny the title of the complainant as trustee, and claim the property in behalf of the church of which they are trustees. They deny their accountability for the rents and profits, except to the said Concordia Church, and insist that the right and title of the property is in them; and aver that possession of the same has been in the church of which they are trustees for over thirty years.

Seivers and others, as trustees of the First Reformed Church of the city of Washington, answer the bill, admitting in general its allegations; insisting that their church is the legitimate successor of the Calvinist Society, and claiming that they are the rightful beneficiaries under the trust set forth in the bill.

A large amount of testimony was taken on behalf of the respective claimants, and the case has been argued with ability and care.

It appears from the proof that about the year 1832 a large number of Germans found themselves domiciled in

the city of Washington, which then contained no church where the services were performed in their own tongue. The bond of nationality proved stronger than devotion to religious forms, and they all, from time to time, assembled in common worship conducted in the German language by some of their members; and the testimony discloses the rather remarkable fact that this company of foreigners, composed of Jews, Roman Catholics, Lutherans and Calvinists, for a considerable time continued in harmony to attend the same religious exercises.

About the close of the year, at one of these religious meetings it was mentioned by some one present, that he understood there were two lots of ground in the western part of the city, which had been set apart by a certain Jacob Funk for the benefit of German religionists. It was thereupon decided that inquiry should be made to ascertain the facts. The result of the investigation disclosed that on the assessment books of the city there stood in the name of "D. Reintzel, for Lutheran Congregation," a lot at the corner of Twentieth and G streets, and in the name of "Reintzel, for Calvinist Society," a lot at the corner of Twenty-second and G streets.

It appears from the records of the District in proof, and from recitals in the statutes of Maryland and of the United States, that as far back as 1770 a certain Jacob Funk became the proprietor of a parcel of land in Prince George's county, Maryland, reaching in a northeasterly direction from the neighborhood of what is now known as Easby's wharf, on the Potomac river, in Washington city, towards Pennsylvania avenue; that in that year he caused a plat of a town to be made, which was entitled "the plan of Hamburg," upon which he divided his property into streets, squares, and lots, and that he executed conveyances of many of these lots, which were recorded in the office of the county court of Prince George's county.

In 1791 the legislature of Maryland passed a law, chap-

ter 45, reciting that the President, by virtue of several acts of Congress and of the assemblies of Virginia and Maryland, by his proclamation in March, 1790, had declared that the ten miles square for the permanent seat of Government for the United States should be included within designated lines upon both sides of the Potomac; that Notley Young and Daniel Carroll, of Duddington, and many others, proprietors of a greater part of the land so laid out in the city, had conveyed their lands to trustees, agreeing to give up part to the United States, and subjecting another part to be sold to raise money as a donation to be employed in establishing the seat of Government; and that many of the proprietors of lots in Hamburg had agreed to subject their lots to be laid out anew, giving up one-half to be sold and they to be reinstated in one-half of the quantity in a new location, &c., in the city, but that some of the proprietors of Hamburg, from imbecility or other causes, had failed to come into such agreement; and it appearing to the general assembly just and expedient that all the lands within the city should contribute in due proportion in the means which had already greatly enhanced the value of the whole, and that an incontrovertible title should be made to the purchasers under public sanction, it was enacted that in all cases where persons holding lots in Hamburg had failed to make such conveyance to the trustees, public notice should be given and an allotment thereafter made, assigning to each holder of lots in Hamburg a lot on the plat of the city equal to one-half in quantity of their original holding; and that all persons to whom allotments and assignments of land should be made by the commissioners according to this law should "hold the same in their former estate," in lieu of their former possessions.

It is further shown that a report was made by the commissioners appointed under this law, specifying the par-

cels of land which had been allotted by them to the former owners of lots in Hamburg, in lieu of their original lots; and that in accordance with the statute the commissioners conveyed said substituted lots to such persons; and that among the lots received under such circumstances was lot 9, in square 80, the vacant lot in controversy, which was conveyed to "D. Reintzel for Calvinist Society," by a deed of conveyance of the 28th of June, 1793, in lieu of lot No. 75 standing in the same name on Funk's plat; and on the same day, lot No. 5 in square 121, was conveyed to "D. Reintzel for Lutheran Congregation" in lieu of lot No. 183 on Funk's plat.

It does not appear, and it is not probable, that the inquiry as to the lots which was set on foot by the Germans resulted in the ascertainment of any of the foregoing particulars as to the title, or disclosing anything further than the entries in the assessment books. But shortly afterwards they took possession of the lot at the corner of 20th and G streets, and by the joint efforts of all the Protestant Germans a church was erected for their common use; the Jews and Roman Catholics having previously withdrawn and allied themselves with congregations of their own faith.

The purpose of those aiding in the erection of the church seems rather to have been the establishment of a place where they might listen to Protestant religious teaching in their own language, than the inculcation of any of the peculiar tenets of the different Protestant churches. The evidence shows that Lutherans and Calvinists contributed alike toward the building; and that after its completion the Holy Communion, from time to time, was administered within its walls, alternately, according to the respective usages of those denominations. The inscription over the principal door of the edifice, "Concordia Church," seems to have been conceived in sympathy with this sentiment and purpose.

For many years thereafter the lot at the corner of 22d and G streets, the subject of the present controversy, remained unoccupied. No taxes were assessed against it by the municipality, showing that it was recognized as church property. Finally it was taken possession of by the persons claiming to act as trustees of the Concordia Church, and it has since been leased and rented to different individuals, by the trustees of that church, who received the rents as they accrued, and who are still in its possession.

After the joint occupancy at the church building had continued for a considerable time, an attempt was made by the pastor then in charge to introduce and inculcate the distinctive forms and doctrines of the Lutheran Communion; and this led to the withdrawal of a considerable number of the Calvinists, and the establishment by them of the First Reformed Church.

Many of the pronounced Lutherans had also withdrawn and joined themselves to the Lutheran churches which had been erected in the city. But there still remained, as attendants of the Concordia Church, some of its original promoters, who formed the nucleus of the present congregation, which claims the vacant lot as belonging justly to the Concordia Church, to the exclusion of all others.

1st. The trustees of the Concordia Church first object to the form of the present proceeding. They rely upon the principle of equity pleading, that it is essential to the maintenance of a bill of interpleader that the plaintiff should occupy a position of entire impartiality between the different claimants, and be in no way interested in the result of the litigation, since otherwise he might, indirectly, influence the decision; and they insist that the complainant in this case is disqualified to maintain this suit since he is shown by the proof to be the minister of the First Reformed Church, one of the defendants.

But in our opinion this fact does not necessarily commit him, in his capacity as trustee, to the interests of the Reformed Church.

The object of the proceeding is to determine, and thereby to instruct him, in whose behalf he shall continue to hold the property; and as trustee, he is equally interested and bound to uphold the rights of the one set of claimants, or the other, according as the question may be decided by the court.

The complainant expressly disclaims all interest in the result, and annexes to the bill the usual formal affidavit required by chancery practice in such cases—that he does not collude with either claimant to the trust property, but brings the suit for the sole purpose of procuring from the court a determination of the question as to which of the rival trustees are the legal beneficiaries of the trust.

Under his appointment as trustee by the court he holds the property as Reintzel held it. If Reintzel would now be adjudged to stand as trustee for the benefit of the Concordia trustees, so must the claimant; if for the benefit of the Reformed Church, the complainant must equally be held to be trustee for that organization; and if it should be decided that neither of these distinctive organizations is entitled, but that the property belongs to some other association more properly representing the "Calvinist Society," then, as trustee, he is bound to maintain the rights of that association against both the others, or be removed from his trust.

The general principle asserted in behalf of the Concordia Church is undoubted. But there are bills not strictly of interpleader which are known as "bills in the nature of bills of interpleader;" and we regard the present as of this character.

It is laid down in works of authority that, although a bill of interpleader strictly so called lies only where the party applying claims no interest in the subject matter,

yet there are many cases where a bill in the nature of a bill of interpleader will lie by a party in interest to ascertain and establish his own rights where there are other complicating rights between third parties. "For instance, if a plaintiff is entitled to equitable relief against the owner of property, and the legal title thereto is in dispute between two or more persons, so that he cannot ascertain to whom it belongs actually, he may file a bill against the several claimants in the nature of a bill of interpleader for relief. In these cases the plaintiff seeks for relief for himself, whereas in an interpleading bill, strictly so called, the plaintiff only asks that he may be at liberty to pay the money or deliver the property to the party to whom of right it belongs." (Story's Eq. Pl., § 279, *b*.)

To the same effect it is stated in Story's Equity Jurisprudence, § 817, *a* and *b*, that an agent of one of two parties can be complainant in a bill in the nature of a bill of interpleader where the other party claims under his principal. And so it has been held that a public agent may interplead independent claimants.

We consider that this bill is maintainable upon well-settled principles of equity jurisdiction.

Courts of chancery have supervision and control of all unincorporated societies or associations. With respect to them they have the power of prevention of acts contrary to law and prejudicial to the interests of the community or to the rights of individuals, and can afford specific relief where a recovery in damages would be an inadequate remedy for the wrong. 62 Penn. St., 428, Kisor's Appeal.

Where, by reason of the numbers of the parties and the character of their rights, damages are unsuitable as a means of redress, it is settled that equity will apply the required remedy. As in 50th Maryland, 38, Gilbert v. Arnold, where the trustees of a Methodist church applied

for an injunction to restrain interference with the property by rival claimants, the court declared that, conceding the complainants had a full and adequate remedy at law for the acts of intrusion, yet, taking into consideration the number of the beneficiaries entitled under the trusts, the vexatious litigation, and recurring multiplicity of suits which would necessarily arise if the settlement of these questions were to be remitted to the law, it was proper that equity should assume jurisdiction and grant relief. The same doctrine is announced in the well-known case in 2d Peters, 585, Beatty v. Kurtz.

The jurisdiction of chancery is exercised in this class of cases upon the ground of a trust. It is the duty of these tribunals to give effect to the powers of the trust if they be legal, and to that end they must ascertain and determine its scope and object; in that investigation they are authorized to resort to the early history of the church, as contained in standard and authentic works on the subject, prior in date to the existence of the particular controversy.

2d. Believing, then, that the complainant has full right to maintain this suit, the next question is, for which of these contesting parties, if either, should this property be held by the trustee?

We have seen that this property stood on the assessment book in the name of "D. Reintzel for Calvinist Society." The Calvinist Society thus described, or its legal successor, must of course be the properly-entitled claimants, if the trust is a valid one.

Have the defendants, Killian and his co-trustees of the German Evangelical Concordia Church, shown themselves entitled as the beneficiaries of the trust?

It appears that since the institution of this suit, these trustees for the first time have applied to become incorporated under the general laws of the District by the name of "The German Lutheran Evangelical Concordia

Church," although they insisted, when the proof was taken, that a considerable portion of their members held the Calvinist doctrines.

It seems to us clear that the Concordia trustees have failed to show that they are the successors in doctrine of the Calvinist Society. It is part of the general history of the world that after the Protestant Reformation had been set on foot by Luther, the first authoritative declaration of the principles of the great reformer was presented to Charles V., 25th June, 1530, at the city of Augsburg, in certain articles of faith embodied in what is known as the Augsburg Confession; and this confession, revised by Melancthon, under the supervision of Luther, has ever since, it is believed, constituted the accepted creed of the Lutheran Church. Soon that came to pass among the reformers which characterizes the progress of all reformations. Those who have taken the initiative in such great enterprises soon find themselves left behind by the more enthusiastic and enterprising of their former followers. The more ardent of the reformers soon declared that the reformation was incomplete; that it was not as thorough as it should have been, and they especially censured the retention by the Lutherans of the practice of auricular confession, and their supposed doctrine as to the presence in the sacrament under the name of consubstantiation. These reformers of the Reformation, under the lead of Calvin, formulated their amended creed in what is known as the "Heidelberg Catechism," which disputed the doctrine of consubstantiation, insisted that the sacrament in both kinds should be given to the laity, discarded the use of the Hostie or consecrated waifer, and denounced in all its forms the practice of auricular confession to priests.

Now it appears distinctly in the proof that the books of doctrine in use in the Concordia Church, during all this time, have been those of the Augsburg Confession; and that wherever there has been a distinct attempt to

define the doctrines of those worshiping there, it has disclosed an adherence to the Lutheran rather than the Calvinist tenets of belief and practice. The predominance of this distinctive tendency is further evinced by the circumstances already alluded to, that since the institution of this suit their trustees have elected to be incorporated under the name of "The German *Lutheran* Evangelical Concordia Church."

Indeed, the claim that the Concordia Church holds the religious doctrines maintained by the Calvinist Society about the close of the last century, is so much at variance with the proof that the Concordia trustees have chiefly rested their claim of title upon possession—which, according to their answer, has continued in them for thirty years. It is well settled that before parties can successfully maintain a title to land by possession alone, they must show that this possession covers the full period of twenty-one years; and that during all this time it has been actual, adverse, visible, notorious, exclusive and unbroken, with claim of title against all the world. 10 Md., 148, Thistle *vs.* Frostburg & Co.; 32 Md., 355, Baker *vs.* Glessee.

But the proof establishes no such form or duration of possession by these claimants. Without further comment upon the evidence, it is enough to advert to the fact that less than twenty years since, by a resolution of the trustees of Concordia Church, it was declared that unless the Calvinists, within ten years from that date, should erect a church on the lot in question, it should be *thereafter* claimed absolutely by the Concordia Church; and as late as 1867 the members of the Calvinist communion of the city of Washington, publicly claiming title thereto, took measures to build on the lot a church for their own people, although they afterwards saw fit to change this purpose.

But even if possession uninterruptedly for twenty-one

years had been shown in the trustees of the Concordia Church, such possession could only have been in behalf of the beneficiaries of the trust originally held by Reintzel, whoever they may be; and the Concordia trustees cannot invoke this length of possession against these beneficiaries. While they held possession it was in behalf of the real *cestui qui trusts*, under the trusts impressed upon the property in the hands of Reintzel, and the statute of limitations, if openly pleaded, has no application to express subsisting trusts. Because of the privity existing between them, the holding by a trustee is the possession of his *cestui qui trust*, and wherever a trustee seeks to claim against his trust and thus destroy it, the courts hold that his tenure shall be reckoned according to his title as trustee. (32d Maryland, 239, Lieman's estate.) And if it were true, as alleged by the Concordia Church, that a part of those composing their congregation has always consisted of Calvinists, the possession by the trustees was equally a possession for the Calvinists. Where the possession of a party is under and in privity with the estate of the person under whom such party claims, there could be no adverse possession against that person. 22d Md., 419, Nutwell vs. Tongue.

This length of possession is not presented by a plea of the statute against the right of recovery by the Reformed Church, but is relied on by the Concordia trustees as a circumstance from which a presumption may arise of the execution to them of a grant of the land. But this presemption can never arise in the absence of such possession as the law requires as a preliminary condition. It is clear then that we cannot decree in favor of the trustees of the Concordia Church.

3d. Has the First Reformed Church of the city of Washington shown such title as will enable this court to decree in its favor?

It is not the same in name with the Calvinist Society.

The believers in the doctrine of Calvin have been less tenacious of retaining the name of their great leader than the Lutherans, for there are numerous denominations of Christians who have adopted the distinguishing doctrines of Calvin, under widely different names. But it is insisted on behalf of the members of the Reformed Church that they are the only proper successors of the religionists comprehended under the distinctive name of the "Calvinist Society."

Have they maintained this contention?

We have been much impressed by the evidence of Mr. Russell, a clergyman of the Reformed Church, which is given at large in the record.

It appears from the very intelligent narrative of this witness, who is a minister of the Reform Church, that the peculiar doctrines represented originally by the "Calvinist Society" of the last century, and embodied in the Heidelberg confession, have been held under different names by the Reformed Church in this country for more than a century.

Those names have been affected by various circumstances, as the nationality of the members and the location of the churches. Among these designations were "High Dutch," "German Presbyterians," and "Sacramentarians." So under the general denomination "Calvinists" was included the term "German Calvinist;" and the witness concludes his examination of the subject by the declaration of his belief that the Reformed Church of the United States is the only historical successor of the church intended by the name of the "Calvinist Society." We have also been referred, as part of the public history bearing upon the controversy, to the book of the Rev. Michael Slatter, a distinguished divine of the Reformed Church, who was sent to this country about 1740 by the Calvinists, or Reformers, of Holland, to visit their brethren in faith who had settled in different parts of the then

colonial governments. Slatter reports that he found numbers of his co-religionists settled in various parts of Pennsylvania, in the upper counties of Maryland, and in the valley of Virginia, and he visited some of them in the neighborhood of the Potomac. It is also part of the public history of the country that Calvinists, under the name of the Reformed Church, penetrated as far south as North Carolina; and that one-third of the convention that adopted the famous Mecklenburg Declaration of Independence, which preceded the great declaration by more than a year, and is thought by many to have been its prototype, and comprehending the president and other prominent members, were co-religionists of Slatter, who had brought to this country the same love of independence and liberty in civil government which they had claimed in matters of religious belief.

The statutes at large of Maryland contain acts of incorporation by its legislature at a very early day, of congregations of the Reformed Church; and one of these Reformed Churches, under the name of the German or High Dutch Christian Reformed Church, which had been established in that State in the neighborhood of Frederick many years before 1784, was engaged in a mandamus suit about the year 1794, to determine the right of occupancy of its pulpit. This contest is fully reported in the case of Runkel v. Winemiller et al., 3 Harris & McHenry, 429.

A distinctive feature in the belief of the religionists known as the Reformed Church represented under these different denomination titles, is their adhesion to the tenets of the Heidelberg Confession, unembarrassed by other distinguishing points of doctrine which are held by the Baptists and other religious bodies having a Calvinistic origin. And if we are to be guided by the evidence, we are compelled to believe that the dogmas of that confession constitute the creed of the Reformed Church, essentially as they were maintained by the "Calvinist Society"

during the last century, and ever since their first promulgation by the Calvinist branch of the Reformers.

4th. But there is nothing in the record *expressly* declaring that the benefits of the trust, which we have found devolve upon the Reformed Church, should enure to a church of that communion of any particular nationality or location; and the next inquiry is, whether we are justified in declaring that its advantages can be confined to the First Reformed Church, which is represented by August Seivers, and his co-trustees, who are Germans, and is located in the city of Washington, to the exclusion of their co-religionists elsewhere?

In the absence of such express declaration in the trust itself, we must be governed by the circumstances surrounding the trust at its inception. And in adopting this aid to a correct conclusion we are supported by the authority of adjudged cases.

In 7 B. Monroe, 487, Gibson v. Armstrong, where a deed executed in Maysville, Kentucky, conveyed property for the benefit of the "trustees of Methodist Episcopal Church of America," the court held that they were justified by the facts of the case in deciding that the benefit of the trust should secure to the Methodist Episcopal Church in Maysville.

In the case of Beatty v. Kintz, 2d Peters, 585, there had been a dedication by a proprietor of a lot in Georgetown to "the Lutheran Church;" without the addition of words to confine its benefits to any local organizations of that church. But the facts sufficiently evinced the intention of the donor to restrict the benefits of the property to his neighbors, rather than have it frittered away uselessly by subdivision among the Lutheran Church at large; and the Supreme Court properly held that the German Lutheran Church of Georgetown was exclusively entitled to its enjoyment.

By a similar consideration of the circumstances disclosed

in the present case, we are led to the conclusion that the successors in doctrine of the Calvinist Society, of German lineage, and worshiping in Washington city, should be held to be the exclusive beneficiaries of the trust. Certainly the Dutch and German names, "Funk," "Reintzel" and "Hamburg" would seem to indicate the affiliations of the originators of the trust and the nationality most probably designed to be benefited; and the position of the lots, their unimportance to the church in general and their adaptation to use by a local congregation, would repel the idea that men of ordinary sense would think it worth while to make the church in general the beneficiary of what to it would prove the merest trifle. Accordingly we recognize in the trustees of the First German Reformed Church of Washington City the lawful successors of the "Calvinist Society" mentioned in the deed of trust, and entitled to the beneficial interest in the lot in controversy, and to its rents, issues and profits.

5th. Other considerations have presented themselves in the progress of this examination, and among others "whether there is any invalidity in the trust in favor of an unincorporated religious body without the assent of the legislature of Maryland. The statute of charitable uses, 43d of Elizabeth, Ch. 4, never was in force within that State; and the constitution of 1776 invalidated any gift, sale or decree of land to any minister of the gospel or to any religious sect, without the leave of the legislature, except the sale, gift or decree of not exceeding two acres of land for a church and burying ground, which was to be improved, enjoyed or used only for such purpose.

There is nothing in the record to prove that the original Hamburg lot was the *gift* or *devise* of Jacob Funk. He sold and conveyed a large number of the lots described on his plat, and the only support of the idea of a donation of the church lot was the statement made at the meeting

of the Germans in 1832. But whatever he did was accomplished in 1770, before the adoption of the Maryland constitution, which was more restrictive than the English statutes of mortmain in force in the province. That which was conveyed to Reintzel in June, 1793, was to be held by him "as of his former estate in lieu of the former lot," and the title, though acquired in 1793, to the particular lot, related back to the acquisition of the property for which it was substituted before 1770.

That chancery had jurisdiction of devises and conveyances for charitable purposes before the 43d of Elizabeth, may be said to be settled elsewhere than in the State of Maryland, where the contrary is held in 5 G. & J., Dashiell *v.* Att'y Gen'l.

But it is decided that the acts of mortmain applied only to corporations exclusively, and that trusts made by feoffment, grant or devise to unincorporated bodies for charitable uses and purposes, not deemed superstitious, were not invalid. 1 Hoff Ch., 248; Wright *v.* Trustees. And a religious purpose is a charitable purpose, in this respect, as declared by Lord Langdell in 1 Keen, 233.

Again, the Maryland act of 1791, under which the title to lot No. 9 was for the first time vested in Reintzel, in lieu of his former possession in the Hamburg tract, must by every fair intendment be taken as a full legislative assent that the beneficiaries of the trust should have an effective and valid title to enjoy the property then deeded to their trustee, as a religious society, as their name proclaimed them to be. To conclude otherwise would be to impute to the legislature unfair dealing in transferring their original Hamburg property to others by "incontrovertible title," while reserving the power to invalidate the new title communicated under their own statute.

From the date of the deed to Reintzel to this time, no claim has been presented by any one attacking Reintzel's title, and all who have claimed the property have

claimed through him. Nearly one hundred years have passed without the pretense of an adverse right against the validity of the trust.

After such an interval, under proper circumstances of possession, the courts would instruct a jury to presume the existence of grants and the enactment of statutes to confirm ancient titles; and it appears to us that, in this case especially, that doctrine of repose might well be invoked to settle a title claimed in the interest of good order and of the principles of morality and religion.

We, therefore, see nothing to invalidate the title of Reintzel by reason of the inhibition in the Maryland Constitution of 1776, or in the antecedent law against the holding of property for the benefit of unincorporated religious societies, or upon any other ground.

And having arrived at the conclusion, as before announced, that the trustees of the First Reformed Church of Washington, D. C., are to be regarded as the successors in faith of the Calvinist Society, we think the complainant should be decreed to hold the property for the benefit of that church. It follows from this that the possession of the property by the defendants, the trustees of the Concordia Church, has been without legal authority, although we have no intention of questioning that this possession was the result of an honest belief of their right to do so.

It follows that their receipt of the rents and profits during this period was without authority, and that they ought to account to the complainant trustees for those rents and profits. But in view of the peculiar circumstances of the case, we have determined that these rents should not be claimed beyond the time of the filing of this bill.

It also appears that the Concordia Church has paid taxes during this time; and if the taxes paid by them should exceed in amount the rents received up to the filing

of the bill, the Concordia Church should be credited with the difference.

We shall pass a decree, in accordance with the principles of this opinion, enjoining the Concordia Church from interfering further with the possession of the lot; directing the trustee, Ebbinghaus, to hold the property for the benefit of the First Reformed Church, and to account to them for the rents, issues and profits of said property, and requiring an account to be taken by the auditor of the amount of rents so received by the Concordia Church, and of their payments on account of the taxes.

The CHIEF JUSTICE and Associate Justices WYLIE and HAGNER sat in this case.